TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 264.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND I. W. SNUGGS, TREASURER OF STANLY COUNTY, PETITIONERS,

vs.

W. N. COLER & COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 6, 1903.
CERTIORARI AND RETURN FILED JUNE 9, 1903.

(18,458.)

(18,438.)

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INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the circuit court of the United States for the western district of North Carolina	1	1
Caption	1	1
Bill of complaint	1	2
Exhibit A—Copy of bond	7	7
Restraining order	9	8
Marshal's return on restraining order	9	8
Marshal's return on subpœna	10	9
Prosecution bond	10	9
Affidavit of Valentine Manney	11	10
Answer of Board of Commissioners	12	11
Transcript from the superior court of Stanly county in case of Board of Commissioners *et al. vs.* Snuggs	17	15
Summons	17	15
Bond for costs	18	16
Complaint	18	16
Exhibit—Order, June term, 1889	22	19
Restraining order	23	20
Undertaking	24	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 13, 1902.

	Original.	Print
Answer	25	22
Appeal bond	27	23
Agreement of counsel on appeal	27	23
Order continuing restraining order, &c	28	24
Certified copy of proceedings of house of representatives	29	25
Judgment in accordance with opinion of supreme court of North Carolina	33	29
Opinion of supreme court of North Carolina	34	29
Judgment of supreme court of North Carolina	40	35
Clerk's certificate	41	35
Separate answer of I. W. Snuggs to bill of complaint	41	36
Replication to answer of Board of County Commissioners of Stanly County	47	40
Replication to answer of I. W. Snuggs	48	41
Opinion, decree, and order for injunction	49	42
Bond of Kerr Craige, receiver	60	51
Writ of injunction	62	53
Marshal's return to same	63	53
Petition on appeal	63	54
Allowance of appeal	64	54
Assignment of errors	64	54
Bond on appeal	66	56
Approval of same by judge	68	57
Citation on appeal	68	57
Acceptance of service	69	58
Order granting time to perfect appeal	69	58
Supersedeas bond	70	59
Order extending time fifteen days to prepare record	72	61
Letter from his honor Judge Simonton	73	61
Final decree	73	62
Order to transmit record	74	62
Clerk's certificate	75	63
Order extending time	75	63
Docket entries	76	64
Stipulation as to filing briefs	76	64
Opinion of August 11, 1899, by Goff, J	78	65
Decree of August 11, 1899	91	74
Petition for rehearing	93	75
Order staying proceedings	101	80
Opinion of February 4, 1902, by Morris, J	103	81
Opinion of February 4, 1902, by Boyd, J., concurring	113	89
Dissent of Goff, J	132	102
Final decree	133	102
Order staying mandate	134	103
Clerk's certificate	134	103
Return to writ of certiorari	135	105
Stipulation as to return	136	105
Writ of certiorari	137	106

a *Certified Transcript of Record.*

United States Circuit Court of Appeals, Fourth Circuit.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, County Treasurer, Appellants,
versus
W. N. COLER & COMPANY, Appellees. } No. 290.

Appeal from the circuit court of the United States for the western district of North Carolina.

Record filed October 10th, 1898.
Clerk's office, U. S. circuit court of appeals, fourth circuit. H. T. Meloney, clerk, Richmond.

1 *Transcript of Record.*

UNITED STATES OF AMERICA, *Western District of North Carolina,* } *To wit:*

At a circuit —— of the United States, begun and held in the court-house, in the city of Charlotte, on the second Monday in June, being the 13th day of the same month, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Charles H. Simonton, circuit judge.

Among other were the following proceedings, to wit:

W. N. COLER, W. N. COLER, JR., BIRD S. Coler, James W. Campbell, and Francis W. Coler, Bankers, under the Name and Style of W. N. Coler and Company, Complainants,
vs.
THE BOARD OF COMMISSIONERS OF STANLY County and I. W. Snuggs, Treasurer of Stanly County, Respondents. } In Equity. No. 42.

Therefore, to wit: on January 20th, as of January 18th, 1898, the complainants file in our said court a bill of complaint, in the words and figures as follows, to wit:

Bill of Complaint.

UNITED STATES OF AMERICA,
Western District North Carolina.

In the United States Circuit Court, Western District of North Carolina.

W. N. COLER, W. N. COLER, JR., BIRD S. COLER, JAMES W. Campbell, and Francis W. Coler, Bankers, under the Name and Style of W. N. Coler and Company, Complainants,

vs.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, Treasurer of Stanly County, Respondents.

In Equity.

Bill.

2 The complainants, W. N. Coler, W. N. Coler, Jr., Bird S. Coler, James W. Campbell, and Francis W. Coler, are each and every one a citizen and resident of the State of New York, and are bankers, under the name and style of W. N. Coler and Company; and the said complainants bring this, their bill of complaint, against the Board of Commissioners of Stanly County, each and every member of which board being a citizen and resident of the State of North Carolina and of the county of Stanly, and within the western district of North Carolina; and also bring this, their bill of complaint, against I. W. Snuggs, treasurer of Stanly county aforesaid, and a citizen and resident of said county, within said district; and thereupon your orators complain and say:

I. That the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars, this suit being begun for the purpose of recovering from the respondents the sum of three thousand, eight hundred and seventy dollars ($3,870), and to enjoin the respondents from paying out, or in any manner interfering with, a sum of money, to wit: six thousand dollars ($6,000), held by the respondent Snuggs, treasurer as aforesaid, it being amount due holders of coupons, interest on certain bonds, hereinafter mentioned, other than is directed by this court, the said sum of three thousand, eight hundred and seventy — ($3,870) being due upon the coupons held by complainants, the said coupons being the obligations of the said county to pay the complainants said amount.

II. That your orators, under the firm name of W. N. Coler and Company, are engaged in the banking business, in the city and State of New York, and as such are buyers and sellers of municipal bonds.

III. That, as such, your orators bought, for valuable consideration and for a large sum, the market price, a great number of bonds, to wit: forty-eight Stanly County bonds, of the denomination of one thousand dollars each, bearing interest at the rate of six per centum; and thirty-three Stanly County bonds, of the denomination of five

hundred dollars each, bearing interest at the rate of six per centum, payable on or about the first of July, in each and every year. That the purchase of the bonds, aforesaid, was for value, in good faith, and without any notice, express or implied, that there was any suggestion of their being void, invalid, fraudulent, or otherwise than perfectly legal in their issue and sale.

IV. That the total issue of bonds by the said county, in pursuance of the authority and power conferred upon the board of
3 commissioners of the same, and in pursuance of which power the said bonds held by complainants, as aforesaid, were issued, was in the amount of one hundred thousand dollars, and all of which said bonds, as complainants are informed and believe, being of different denominations, were sold as aforesaid, and have been in the possession of *bona fide* holders; and the interest on the same has been paid promptly and regularly, at the time the same has become due, for the last four years, as complainants are further informed and believe.

V. That the interest due from year to year, and payable as aforesaid, on or about the first of July, upon the bonds held by complainants, as herein set out, is evidenced by certain coupons attached to said bonds, as follows, to wit:

48 Stanly Co. coupons No. 2, 46, 48, 49 and 72, $60.00 each	$2,880 00
33 Stanly Co. coupons No. 81, 92, 95, 96, 98, 108, 110, 112, 116, 118, 120, all numbers inclusive, $30.00	990 00
Making the sum of	$3,870 00

interest due, and still unpaid, upon the bonds issued and purchased by your orators, complainants in this bill, which said sum your orators have demanded of respondents, by presenting the said coupons, as has heretofore been done, when payment was made, at the four several times, aforesaid.

VI. That, although the said sum, collected from the tax-payers of the said county, by reason of a levy made by the said board of commissioners, in pursuance of the power conferred upon the same, is in the hands of the said respondent, the treasurer of the said county of Stanly, for the purpose of paying the said interest, due and payable on or about the first of July, 1897, he, the said respondent, refuses to pay the same to the holders of the said coupons, your orators and complainants. That, having received the same for the purpose aforesaid, and only for that purpose, he, the said treasurer, the respondent, I. W. Snuggs, has become, and is, the trustee, the agent, the *quasi* agent, of the bond and coupon holders, between whom, your orators and him, there exists a relation, fiduciary in its character, he, the said treasurer, holding the said sum for the use, and in trust for complainants.

VII. That, as your orators are informed and believe, the reason the said treasurer has not accounted with your orators, as
4 under the rules of equity he is required to do, being, as he is, the trustee as aforesaid, is the fact that the said board of

commissioners sued out a certain process of injunction from one of the superior courts of the State of North Carolina, within the western district aforesaid, and caused the same to be served upon him, the said treasurer, enjoining him from accounting with the holders of any of the said bonds and coupons, and from paying over to them the interest due as aforesaid, which interest the board of commissioners had caused to be paid into the hands of the said treasurer, and held by him for the sole purpose of the payment of the said interest.

VIII. That the suit in the said superior court of Stanly county, in which the injunction was obtained, was begun in the name of the board of commissioners, and in the names of Jas. P. Nash and G. R. McCain, as plaintiffs, against I. W. Snuggs, defendant; and the complainants, your orators, were not made parties to the same, nor was any other bondholder made such party. And your orators do further say, as they are informed and believe, that they, as such bondholders, are in no manner affected by the judgment or decree of the said State superior court, which granted the injunction aforesaid. Your orators further say, that this proceeding in the said State court was taken years after the issue of the bonds and purchase of the same by complainants, your orators, and, as they are informed and *and* believe, for the purpose of repudiating the honest debt of the county, contracted and made by the said county, which received full value and consideration for the same, as your orators will set out in a subsequent part of this bill. That, as your orators are informed and believe, the said respondents well know that the said bondholders are in no way affected by the said injunction proceeding, and that the said board of commissioners purposely avoided making the bondholders, your orators, parties defendants in the said State court proceeding, to prevent a removal of the suit to the jurisdiction of this, the circuit court of the United States.

IX. That the Yadkin Railroad Company is a corporation organized under the laws of the State of North Carolina, and, being organized, constructed and is operating a railroad running from Salisbury, North Carolina, south to Norwood, a point in the county of Stanly, aforesaid. That the said corporation was empowered by its charter and amendments thereto, enacted by the legislature of North Carolina, and also the general statute laws of the said State pertaining to corporations, railroads, counties and towns, etc. to construct and operate said railroad as aforesaid. That the incorporation of the said company was under, and by virtue of chapter 236 of the Acts of 1870, passed by the legislature for that year; and the said chapter was amended by an act of the legislature, chapter 183 of the Acts of 1887.

X. That the county of Stanly, aforesaid, being desirous of aiding in the construction of the said railroad, and acting through its proper authorities, subscribed the said amount of one hundred thousand dollars to the capital stock of the said Yadkin Railroad Company, in pursuance of the authority and power conferred upon the said county under and by virtue of the acts of the legislature of North Carolina as above set out; and, also, under and by virtue of

sections 1996, 1997, 1998 and 1999 of the Code of North Carolina, all of the said acts and sections of the Code of North Carolina having been enacted and become laws in accordance with the constitution of the State.

XI. That, in return for, and in consideration of, said subscription, the said Yadkin Railroad Company issued to the said county of Stanly, stock in and to the amount of one hundred thousand dollars, which stock the county holds now, and has held since the date of the issue of the same, to wit: in the year 1891. That the said county of Stanly also, by reason of the completion of the said railroad, running, as it does, through the best portion of the same, for a distance of about thirty miles, has received benefits from the same, in the greatly increased value of the lands of the county, in the increased and improved transportation within the limits of the same; and further, by reason of the taxes paid into the treasury of the county by the said railroad company, in each and every year.

XII. That the said bonds, hereinbefore defined and set out, were issued to the said corporation by the said county on or about the 6th of April, 1889, and 1st of June, also, of the same year, in payment of said subscription, and contain recitals, each and every one, of its issue, in accordance with the provisions of the statutes of the State, and of the constitution, aforesaid, naming in the body of the bonds the enabling acts and laws under, and in pursuance of which, issued. That a copy of the bonds so issued is hereto attached, and marked "A."

XIII. That after the issue of the said bonds to the said Yadkin Railroad Company, they were duly exposed to sale by said
6 company, and your orators bought, as hereinbefore set out, those which they now hold, paying for them a large sum of money, the highest market price.

XIV. That the said treasurer and Board of Commissioners of the County of Stanly, unless restrained by the order and decree of this court, will make way with, or dispose of, the said sum of money in the hands of the treasurer, as your orators are informed and believe, having refused to pay over the same as required, and by such refusal the said parties, respondents, have committed a breach of the trust reposed in them, and ignored their obligations, as hereinbefore set out. That the amount due your orators is defined, set apart, and an acknowledged debt, in its nature, accompanied by a right to the appropriation of the said sum, in the hands of the treasurer aforesaid, for its payment, your orators having an interest in the said sum, and a lien thereon, under the conditions hereinbefore recited.

XV. That, as advised, your orators say, they are entitled to have an account stated between them and the respondents, to ascertain the condition of the sum held for them by respondents, and ascertain what they are to receive upon their coupons; and they are further advised that, according to the rules of this court, they are entitled to have an injunction upon the said respondents, against disposing of the said sum, in any other manner than under the

decree of the court, and further, to have a receiver appointed to hold the said sum, as the agent of this court.

Wherefore, the premises considered, your orators pray:

I. That this honorable court enter a decree compelling the taking and statement of an account, as set out in the bill; that an injunction issue upon the respondents, as set out in the bill also; and that a receiver be appointed, as set out therein.

II. That if, in the opinion of this court, it shall be deemed advisable, notice be issued to all bondholders having an interest in the said sum, to appear and file with the master their coupons, to the end that their rights may be ascertained, and amounts due them stated in the account to be taken.

III. That not only a writ of injunction, conformable to the prayer of this bill be issued, and receiver appointed, but also a writ of subpœna of the United States of America, directed to the said
7 Board of Commissioners of Stanly County, and I. W. Snuggs, treasurer of said county, commanding them on a certain day to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem proper, and required by the principles of equity and good conscience.

IV. That if in anything your orators are mistaken in its relief, then they pray for all such other, further and general relief as the premises may warrant and the rules of equity allow.

W. N. COLER AND COMPANY,
Per CHAS. PRICE, *Solicitor.*

THE UNITED STATES OF AMERICA, }
Western District of North Carolina. }

SALISBURY, N. C., *January* 17, 1898.

This day came Charles Price, who makes oath that he is the agent and attorney of the complainants, all of whom reside in the State of New York, and are absent from this district; that owing to their absence they are not able to make the verification of this bill; that the same is founded upon written instruments in the hands of this affiant, for the payment of money only, and further, that the bill of complaint is true, except as to the matters stated on information and belief, and as to those matters, he believes it to be true.

CHAS. PRICE.

Sworn to and subscribed before me, this 17th of January, 1898.

[SEAL.] W. G. WATSON,
Clerk Superior Court, a Court of Record, Rowan County.

EXHIBIT A.

(Copy.)

County of Stanly Six per Cent. Bond.

Stanly County, State of North Carolina, is indebted to the bearer in the sum of five hundred dollars, lawful money of the United States, payable on the first day of July, A. D. one thousand nine hundred and twnety, with interest thereon from the first day of July, A. D. one thousand eight hundred and ninety, at the rate of six per cent. per annum, payable on the first day of July in each year at the First National Bank of Salisbury, North Carolina, on presentation and surrender of the respective coupons hereto attached, as they severally become due and payable. This bond is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, making a total of one hundred thousand dollars, issued by authority of an act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled "An act to amend the charter of the Yadkin Railroad Company," and of sections 1996, 1997, 1998 and 1999, of the Code of North Carolina, and authorized by a majority vote of the qualified voters of Stanly county, at an election regularly held for that purpose on the 15th day of August, A. D. 1889, duly ordered by the board of commissioners of Stanly county.

This series of bonds is issued to pay the subscription of one hundred thousand dollars made by Stanly county to the capital stock of the said railroad, known as "The Yadkin Railroad Company." Stanly county reserves the privilege of paying the principal and interest of any or all of this series of bonds at any time after the expiration of ten years, upon the board of commissioners of said county first giving three months' notice of such payment in some newspaper published in said county, when such bonds shall be paid, according to number, beginning with number one.

In testimony whereof, the chairman of the board of county commissioners of Stanly county hath hereunto subscribed his name, for and on behalf of said board, and the clerk of the superior court of Stanly county hath countersigned the same and affixed thereto the seal of said superior court, this first day of July, A. D. one thousand eight hundred and ninety.

——— ———, *Chairman.*

Countersigned:

———,

Clerk of Superior Court.

And on the same day, January 20th, 1898, the following restraining order, made by the court, is issued, with certified copies for respondents, to wit:

9 *Restraining Order.*

United States Circuit Court, Western District of North Carolina.

W. N. COLER AND COMPANY, Complainants,
vs.
THE BOARD OF COMMISSIONERS OF STANLY COUNTY, NORTH CAROLINA, and I. W. Snuggs, Treasurer of said County, Respondents.

Order.

On reading the verified bill in the above-entitled suit and exhibit, filed as part thereof, it is ordered that the complainants' motion for injunction and receiver, etc., pursuant to the prayer of the bill, be set down for hearing at 12 o'clock m., before the circuit court of the United States, at Greensboro, on the Tuesday after 1st Monday of April, 1898, or as soon thereafter as counsel can be heard.

This being a proper case for granting a temporary restraining order, it is ordered and decreed that until the hearing of such motion for injunction and receiver, etc., and the further order of the court thereon,

The respondents, The Board of Commissioners of Stanly County, and I. W. Snuggs, treasurer of said county, are restrained and prohibited from making way with, disposing of, or in any manner interfering with the sum of six thousand dollars in the hands of the said I. W. Snuggs, as alleged in the bill.

It is further ordered that a certified copy of this order be served upon the respondents, by reading and delivering a copy thereof.

It is further ordered that subpœnas issue to the respondents, as prayed for in the bill.

CHARLES H. SIMONTON,
Circuit Judge.

January 18th, 1898.

Endorsement: Filed in this office January 20, 1898, as of January 18, 1898. H. C. Cowles, clerk.

Marshal's Return.

Received by me on the 21st of January, 1898, and served
10 on The Board of Commissioners of Stanly County and I. W. Snuggs, treasurer, respondents, by reading the order and delivering copies of the same to the said board of commissioners and treasurer.

Service as above was made by me on the 22nd of January, 1898.

J. M. MILLIKEN,
U. S. Marshal,
By P. D. ATWELL, *D. M.*

And on March 12th, 1898, in pursuance to the foregoing order of the court, as appears by the record, a writ of subpœna in the usual form, returnable as ordered at Greensboro, N. C., was issued out of our said court for said respondents, and returned by the marshal duly executed, but at the hearing of the cause at said June term, 1898, at Charlotte, N. C., said subpœna was, by some one, misplaced from the files in the court-room where the hearing was being had, and has not as yet been found or replaced. The return of J. M. Millikan, United States marshal of said district, per P. D. Atwell, deputy marshal, to said subpœna was, as appears of record, as follows, to wit:

Return to Subpœna by Marshal.

"Served March 14, '98, by reading and delivering a copy to Mrs. Clemye James at Asheville, N. C., and same day by reading and delivering a copy to S. T. Pearson at Morganton, N. C., and March 15, 1898, by reading and delivering copy to Mrs. Fannie E. Howard at Salisbury, N. C., and also delivering copies of petition and supplemental bill and order to each *as* said parties at said times and places."

Prosecution Bond.

UNITED STATES OF AMERICA,
Western District of North Carolina.

Circuit Court, 4th Circuit.

W. N. COLER and W. N. COLER & CO. ET AL.
against
THE BOARD OF COMMISSIONERS OF STANLY County and I. W. Snuggs, Treas. of said County. } Prosecution Bond.

Know all men by these presents, that we, W. N. Coler & Company, principals, and John H. McAden, surety, are held and firmly bound unto the defendant in the above-entitled action in the sum of two hundred dollars, to the payment of which we bind
11 ourselves firmly by these presents.

Sealed with our seals, and dated the 20th day of January, 1898.

The condition of the above obligation is such, that whereas the said W. N. Coler and W. N. Coler & Co., *et al.* plaintiffs in the above-entitled cause, have this day brought their action against the defendants therein. Now, if the said plaintiffs shall prosecute their said action with effect, or in case they fail therein, shall well and truly pay to the said defendants all such costs and damages as shall be awarded and recovered against the said plaintiffs, then the above obligation to be void, otherwise to remain in full force and effect.

COLER & CO.,
By CHAS. PRICE, *Att'y.* [SEAL.]
J. H. McADEN. [SEAL.]

Taken and acknowledged before me this 25 day of January, 1898.

J. M. MORROW, *Clerk*,
By L. F. OSBORNE, *D. C.*

Endorsement: Filed January 27th, 1898. H. C. Cowles, clerk.

Affidavit of V. Manney.

STATE OF NORTH CAROLINA, }
Stanly County. }

W. N. COLER, W. N. COLER, JR., BIRD S. COLER, & Francis W. Coler, Bankers, under the Name and Style of W. N. Coler & Company,
vs.
THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, Treasurer. } Affidavit.

Valentine Manney, being duly sworn, deposes and says: That he is a citizen of Stanly county and has been such for a period of forty years. That at the time of the vote of the people of said county on the question of subscription to the Yadkin Railroad Company, he was a director of *of* said corporation, and that he was familiar with all that had been done by said railroad company. That at the time when the board of commissioners of said county passed the resolutions submitting the said question of subscription to the voters thereof, no work of any kind had been done or commenced on the said railroad.

V. MANNEY.

12 Sworn to and subscribed before me this 16th day of April, 1898.

S. H. MILTON,
[SEAL.] *Clerk of Superior Court, Stanly County, N. C.*

Endorsement: Filed in this office June 13, 1898. H. C. Cowles, clerk.

Answer of Board of Commissioners.

UNITED STATES OF AMERICA,
Western District of North Carolina.

In the United States Circuit Court, Western District of North Carolina.

W. N. COLER, W. N. COLER, JR., BIRD S. COLER, JAMES W. Campbell, and Francis W. Coler, Bankers, under the Name and Style of W. N. Coler & Company, Complainants,
vs.
THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, Treasurer of Stanly County, Respondents.
} In Equity.

Answer.

The defendant, The Board of Commissioners of Stanly County, now and at all times hereafter, saving to itself all manner of benefit or advantage of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer, answering saith:

That it is not true as alleged in plaintiffs' complaint, that I. W. Snuggs, treasurer of Stanly county, or the board of commissioners of said county, owe to the complainants the sum of three thousand, eight hundred and seventy dollars ($3,870), or any other sum, or that the defendants hold any amount of money due on coupons to the bondholders as interest, or in — other way, and the board of commissioners deny that they are under any obligations to pay the complainants any amount whatever. The board of commissioners of Stanly county explicitly deny that they owe any debts, legal or equitable, to the complainants.

13 This defendant, upon information and belief, denies that the complainants purchased any Stanly County bonds, as alleged in their bill of complaint, or that the complainants purchased any Stanly County bonds "for value in good faith and without any notice, express or implied," as charged in complainants' bill. This defendant avers that if the complainants purchased any obligations, purporting to be Stanly County bonds, that they purchased them with legal notice that they were void and issued in violation of the constitution of North Carolina.

This defendant, further answering, says that the alleged bond set out in Exhibit "A," and all this class of bonds, purporting to be issued by the county of Stanly, have been declared void by the supreme court of North Carolina, which is the highest judicial tribunal of that State.

See Exhibit "A," attached to this answer and made a part thereof

being the record of the case of The Board of Commissioners of Stanly County *vs.* I. W. Snuggs.

This defendant, further answering, saith that the allegations of complainants, which are set out in a paragraph numbered No. 4, in the bill of complaint in this case, are not true, and are denied. This defendant further saith that no valid bonds were ever issued by the county of Stanly, as charged in the complainants' bill, or that complainants are *bona fide* holders of any valid bonds as charged. This defendant admits that it did pay interest on what it supposed to be valid bonds of Stanly county, but that the defendant refused to pay any further interest on the same after the supreme court of North Carolina had declared them void, and without the constitutional authority of the said county to issue the same. The defendant further says that no lawful interest ever did accrue on the alleged bonds, or that any is now due.

Defendant further denies that I. W. Snuggs has any money in his possession "for the purpose of paying interest on said bonds due and payable on or about the first of July, 1897." The defendant, further answering, expressly denies that I. W. Snuggs, treasurer of Stanly county, "has become, and is the trustee, agent, or quasi agent," of the complainants, or that any fiduciary relations exist between the complainants and the said treasurer, I. W. Snuggs, as alleged.

This defendant, further answering, says that — is not true that the defendant, Snuggs, caused any writ to be served on him for the purposes alleged in the complainants' bill of complaint; in further explanation this defendant says that it was advised by counsel,
learned in the law, that the bonds attempted to be issued by
14 said county were void, and it therefore brought a civil action
in the superior court of Stanly county, praying for an injunction against the said I. W. Snuggs, treasurer, to enjoin him from paying out any further sum of money on the alleged bonds or coupons set out in plaintiffs' complaint, which injunction was issued and an appeal was taken to the supreme court of North Carolina, where the judgment below was affirmed, all of which is fully set out in record "A," hereunto attached.

This defendant further saith that the decision of the supreme court of North Carolina, in the case of Commissioners *vs.* Snuggs, is the decision of the highest judicial tribunal in the State, and that there has been no other decision or judgment given by said supreme court in conflict with the aforesaid decision; but that the said decision is uniform with the decision of the same court delivered in the case of Bank *vs.* The Commissioners, 119 N. C. Reps., p. 214, which are the only two cases in which the principle or validity of these bonds has ever been before the supreme court of the State.

This defendant, further answering, admit- that there were no other parties to the case of Commissioners *vs.* Snuggs except those mentioned in the record of the case, set out as Exhibit "A," but the defendant is advised and believes, and so avers, that the complainants in this case and all other parties or persons claiming an interest

are bound by the judgment in the case above mentioned upon the ground that the bonds were not only voidable, but absolutely void.

This defendant, further answering, saith that it denies that the suit brought by it in the superior court of Stanly county was begun "for the purpose of repudiating the honest debt of the county, contracted and made by the said county, which received full value and consideration for the same," but that the defendants in this case brought the suit aforesaid with a just and honest intention, in good faith, to test the validity and constitutionality of the bonds, which are in controversy in this bill of complaint.

Further answering, this defendant says that they are informed and believe that the University of North Carolina, which claims to hold some of these bonds and standing in the same position as the complainants, were represented in the argument before the supreme court of North Carolina. Defendant denies that it omitted to make the complainants parties in order to prevent a removal of the suit to the jurisdiction of this court, but this defendant, further answering, saith that it is advised and believes that it has a right
15 to choose its own tribunal, to bring this suit where said judicial tribunal has lawful jurisdiction.

This defendant admits that the Yadkin Railroad Company is a corporation chartered by the State of North Carolina and entitled to all the powers and privileges lawfully enacted in its charter, or amendments thereto, for which charters and amendments reference is made to the laws and statutes of North Carolina.

This defendant, further answering, denies expressly that "the county of Stanly subscribed the amount of one hundred thousand dollars ($100,000.00), or any other sum, to the capital stock of the said Yadkin Railroad Company, and it denies that any lawful authority was ever conferred upon the county of Stanly to subscribe to the capital stock of said company, by virtue of any section or sections of the Code of North Carolina.

Defendant, further answering, says that it did attempt, under a mistaken construction of their powers, to subscribe one hundred thousand dollars ($100,000.00) to the Yadkin Railroad Company, and to receive one hundred thousand dollars ($100,000.00) worth of its stock, which said stock, delivered to the county of Stanly by said Yadkin Railroad Company, is utterly worthless. That the Yadkin Railroad Company, through its attorneys and agents, represented publicly to the citizens of Stanly county that the said stock would be worth par value whenever the road was completed, knowing and concealing from the defendant the fact that said company had already prepared mortgage or mortgages upon the said railroad which they knew would make the stock above mentioned in the hands of the county utterly worthless, and that as soon as the said railroad company acquired the pretended bonds of the county they had these mortgages registered, and no dividend has ever been declared by said railroad company, nor is any dividend ever expected in the reasonable course of events. That this fraud and misrepresentation made by the said railroad company and its agents, by which a heavy tax was imposed upon the county of Stanly, induced

the defendant to examine the legality of its bonds, and gave rise to the suit of Commissioners *vs.* Snuggs.

Defendant has been, and is now, ready, since the decision in the case above named, to surrender said worthless stock aforesaid to the Yadkin Railroad Company whenever it is ready to receive the same.

The defendant denies that the county has received any "benefits from the said Yadkin Railroad Company in the greatly increased value of the lands of the county," or in any other way men-
16 tioned in complainants' bill. Defendant denies that it is under any legal or moral obligations to the complainants on account of said allegations, and avers that it has paid to the pretended bondholders a largely greater amount of cash than it has ever received in value or benefit from said railroad company.

Defendant has no information or belief that the complainants bought the alleged bonds "paying for them a large sum of money, the highest price."

Defendant, further answering, says that it is not true that they, or either of them, "have committed a breach of trust reposed in them, and ignored their obligations." Defendant further denies expressly that the county of Stanly owes anything to the complainants, or that the complainants have any "defined, set apart, and acknowledged debt" against the county of Stanly.

Defendant, further answering, says that it denies that "each and every one of the bonds purporting to have been issued by the county of Stanley is in accordance with the provisions of the statutes of the State, or of the constitution of the State, and the defendant again avers that no legal bonds were ever issued to the Yadkin Railroad Company by the county of Stanly.

This defendant, further answering, denies that the complainants have any interest in any sum of money in the possession or control of I. W. Snuggs, treasurer, or in the hands of the county of Stanly, or any lien thereon."

Defendant, further answering, says that it denies that the complainants "are entitled to have an account stated between them and the respondents," or that complainants are "entitled to have an injunction against the respondents," or any other equitable remedy in the premises.

Further answering, this defendant says that all matters stated in the complainants' bill inconsistent with the responses and allegations are untrue, and it denies the same.

And this defendant submits to this honorable court that there is a plain adequate and complete remedy at law for the wrongs complained of in complainants' bill of complaint, and that all and every of the matters in said plaintiffs' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the complainant- are not entitled to any relief from a court of equity, and this defendant hopes that it, the board of commissioners of Stanly county, shall have the same benefit of this defense as if it had demurred to the said plaintiffs' bill.

And this defendant denies all and all manner of unlawful
17 combination or confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause or thing, in said complainants' said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct; and humbly prays to be hence dismissed, with its reasonable costs and charges, in this behalf most wrongfully sustained.

In the United States Circuit Court, Western District of North Carolina.

J. P. Nash, being duly sworn before me, says that he is the chairman of the board of commissioners of the county of Stanly, North Carolina, and that the facts stated in the foregoing answer to be of his own knowledge are true, and that those otherwise stated, he, the said J. P. Nash, believes to be true.

J. P. NASH.

Sworn to and subscribed before me this 5th day of April, A. D. 1898.

SAM'L L. TROGDON,
[SEAL.] *Clerk U. S. Circuit Court and U. S. Commis'r.*

STANLY COUNTY:

In the Superior Court.

THE BOARD OF COMMISSIONERS OF STANLY County and Jas. P. Nash and G. R. McCain
against
I. W. SNUGGS.
} Summons for Relief.

The State of North Carolina to the sheriff of Stanly county, Greeting:

You are hereby commanded to summon I. W. Snuggs, the defendant above named, if he be found within your county, to be and appear before the judge of our superior court, at a court to be held for the county of Stanly at the court-house in Albemarle, on the 1st Monday of September, 1897, it being the 6th day of Septem-
18 ber, 1897, and answer the complaint, which will be deposited in the office of the clerk of the superior court of said county, within the first three days of said term, and let the said defendant take notice that if he fail to answer the said complaint within the time required by law, the plaintiffs will apply to the court for the relief demanded in the complaint.

Hereof fail not, and of this summons make due return.

Given under my hand and seal of said court, this 18th day of May, 1897.

S. H. MILTON,
Clerk Superior Court, Stanly County.

We acknowledge ourselves bound unto I. W. Snuggs, the defendant in this action, in the sum of two hundred dollars, to be void, however, if the plaintiffs, The Board of Commissioners of Stanly County and James P. Nash and G. R. McCain shall pay to the defendant all such costs as the defendant may recover of the plaintiffs in this action.

Witness our hands and seals this 18th day of May, 1897.

J. P. NASH, [SEAL.]
Ch'n B'd Com.
J. P. NASH. [SEAL.]
G. R. McCAIN. [SEAL.]
W. T. HUCKABEE. [SEAL.]
W. F. CRUMP. [SEAL.]

Received May 18th, 1897.

Served May 18th, 1897, by reading the within summons to I. W. Snuggs, the defendant.

G. R. McCAIN,
Sheriff Stanly County.

Complaint.

NORTH CAROLINA, *Stanly County.*

In the Superior Court.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and JAMES P. Nash and G. R. McCain
vs.
I. W. SNUGGS.

The plaintiff complaining of the defendant alleges:

1. That the Yadkin Railroad Company was incorporated
19 by the General Assembly of North Carolina, under chapter 236 of the Acts of 1870, and that section four of said chapter, provides as follows:

"That subscriptions may be made by counties, cities or towns to the capital stock of said railroad company upon the proposition of the county commissioners, or city or town government, as the case may be, and the approval thereof, by the qualified voters of such county, city or town under the regulations and provisions, so far as applicable, prescribed for county subscriptions in an act ratified April tenth, one thousand eight hundred and sixty-nine, entitled 'An act to enable the Chatham Railroad Company to complete its road.'"

2. That the above-mentioned charter was amended by chapter 183 of the Acts of 1887, the said amendment being as follows:

"SECTION 1. That section four, chapter two hundred and thirty-

six, public laws of one thousand eight hundred and seventy and one thousand eight hundred and seventy-one, be amended to read as follows: 'Subscriptions may be made by counties, townships, cities or towns to the capital stock of said company, upon the proposition of the county commissioners or city or town government, as the case may be, with the approval of a majority of all the qualified voters thereof, as prescribed by law, and bonds shall be issued in payment of said subscription, and taxes levied to pay the same, principal and interest, according to the terms and conditions of said bonds. The board of commissioners of the county shall issue the bonds and levy the taxes to pay the *the* township subscription.'"

3. That at the June meeting for the year 1887, the board of commissioners of Stanly county, in pursuance of what it supposed to be the valid provision of said act of 1887, ordered that the question of whether the said county should subscribe to the amount of one hundred thousand dollars to the capital stock of the said Yadkin railroad, and issue in payment thereof its bonds to one hundred thousand dollars, should be submitted to a vote of the qualified voters of the said county, a copy of which said order is hereto annexed as a part of the complaint.

4. That by virtue of the above order an election was held on the 15th day of August, 1889, in the said county, and the question was submitted in the form of "Subscription" or "No subscription." That said election resulted in a majority of the said qualified voters voting in favor of "Subscription."

20 5. That on the 6th day of April, 1891, the said board of commissioners of Stanly county ordered that fifty thousand of said bonds (which had been previously executed and delivered in escrow to the First National Bank of Salisbury), be delivered to A. B. Andrews, president of said Yadkin Railroad Company, first "cutting off and reserving for the board of commissioners of Stanly county all of the coupons for interest due on the 1st of July, 1890 (if any are (were) on), and also the coupons for July, 1891, for interest on $3,750.00. That said bonds were shortly thereafter delivered by the said bank to the said A. B. Andrews.

6. That on the 1st day of June, 1891, the said commissioners ordered that the remaining fifty thousand dollars of bonds (which had also been executed and delivered in escrow as above mentioned) should be delivered by the said bank to the said Yadkin Railroad Company. That shortly thereafter, the said bonds were delivered to the duly authorized agent of the said A. B. Andrews, president as aforesaid, of said Yadkin Railroad Company.

7. That the plaintiffs have no knowledge as to the present ownership of said bonds, but are informed that the coupons on the same have been regularly presented for payment since their issue.

8. That during the year 1896, the commissioners of said county, claiming to act under the laws above stated, levied a tax to the amount of six thousand dollars for the payment of the interest on said bonds accruing on the 1st of July, 1897, which said sum was duly collected, and is now in the hands of the defendant, who is the treasurer of the said county. That there is also in the hands of

the said treasurer the sum of thirty dollars, being the balance of a previous similar levy, and which was not called for by any coupon-holders.

9. That the plaintiffs are informed and believe, and so allege, that the said bonds and coupons are utterly void, they having been issued by the said county without lawful authority. In support of this allegation, the plaintiffs allege that neither the acts of assembly aforesaid, that is to say chapter 236 of the Acts of 1870–'71, and chapter 183 of the Acts of 1887, (in so far as they purport to authorize any county, township, city or town to pledge its faith or issue bonds or levy any tax for the purpose of paying the same or any interest thereof) were passed in accordance with the requirements of section 14, article 11, of the constitution of North Carolina, in that neither of the said acts
21 passed three separate readings in the house of representatives on three different days. The plaintiffs further allege, upon information and belief, that the yeas and nays were not taken in the house of representatives upon any reading of either of the said acts, and the plaintiffs positively allege that the yeas and nays, if taken at all, were not entered upon the Journal of the House of Representatives on the second and third, nor indeed upon any reading whatever of said bills.

10. The plaintiffs further allege that neither *of* the time of the election, nor at any time since, has any proposition *has* been submitted to the qualified voters of said county for the purpose of authorizing the levying and collection of any taxes for the purpose of paying the said bonds, or any interest thereon.

11. That the defendant threatens to pay six thousand dollars and thirty dollars now in his hands as above stated to the holders of said coupons when the same may mature, although the plaintiffs have forbidden him so to do; and the plaintiffs allege that they verily believe the defendant will carry out his said threat, and thus do them irreparable damage unless restrained by the court.

12. That the plaintiffs, Jas. P. Nash and G. R. McCain, are citizens and tax-payers of the said county of Stanly.

13. That plaintiffs have commenced an action against the defendant by issuing a summons herein and causing the same to be placed in the hands of the sheriff.

Wherefore the plaintiffs pray that the defendant be perpetually enjoined against paying the said sum of $6,000.00 and $30.00, or any other money which is now or may hereafter come into his hands, to the holders of the coupons of said bonds, or to any bank or other agent of the said coupon-holders, and for such other and further relief which the court may deem just and equitable.

D. SCHENCK, JR.,
A. C. AVERY,
SHEPERD AND BUSBEE,
Attorneys for Plaintiffs.

NORTH CAROLINA, }
Stanly County. }

Jas. P. Nash, one of the plaintiffs in the above-entitled
22 action, being duly sworn, deposes and says, that he has read the foregoing complaint and that the same is true of his own knowledge, except as to those matters stated therein upon information and belief, and as to those, he believes it to be true.

J. P. NASH.

Sworn and subscribed before me this 18th day of May, 1897.

S. H. MILTON,
Clerk Superior Court, Stanly Co., N. C.

EXHIBIT.

June Term, 1889.

Ordered, that the following proposition presented by Mr. Tho. F. Kluttz, of Salisbury, president of the Yadkin Railroad Company, be accepted. The president and board of directors of the Yadkin Railroad Company having applied to the board of commissioners of Stanly county to make a subscription of one hundred thousand dollars to the capital stock of the said railroad company, and said application having been considered by the board, and it appearing that the citizens of said county have an interest in said railroad, it is hereby resolved and ordered by the board that the county of Stanly shall subscribe said amount of one hundred thousand dollars to the capital stock of said Yadkin Railroad Company, upon the following terms and conditions:

Said subscription shall be one hundred thousand dollars, payable in bonds of Stanly county, in denominations of five hundred and one thousand dollars each, bearing six per cent. interest per annum from the date of the delivery of said bonds to said company, the interest to be payable annually on the 1st day of July in each year; said bonds shall be deposited with the First National Bank of Salisbury, N. C., on the first day of October, 1889, or as soon thereafter as practicable, the bank to hold them and deliver the same to the said railroad company as hereinafter provided. Said bonds shall run for 30 years, with the privilege of paying the principal and interest of any or all of them at any time after the expiration of ten years, upon the board of commissioners of said county first giving three months' notice of such payment in a newspaper published in said county, when said bonds shall be paid according to number, beginning with No. 1, and as bonds are delivered capital stock of said company in like sum to be delivered to the county of Stanly.

An election is hereby ordered to be held at the usual
23 voting places in Stanly county on Thursday, August 15, 1889, for the purpose of enabling the qualified voters of said county to vote for or against the said proposed subscription, those voting for said subscription shall vote a printed or written ticket

with the word "Subscription," thereupon, and those voting against said subscription shall vote a printed or written ticket with the word- "No subscription" thereupon, and said election shall be held in accordance with section 1998 of the Code of North Carolina, and due notice of said election shall be given in accordance with law.

If the proposition to vote said subscription shall be ratified by a majority of the qualified voters of said county at said election, then said bonds shall be delivered to said Yadkin Railroad *County*, as follows: Twenty-five thousand dollars when ten miles of said road is constructed and in operation from the Rowan County line into said county of Stanly; twenty-five thousand dollars more when said road is constructed and in operation from the town of Salisbury to the town of Albemarle, and the remaining fifty thousand dollars when said road is constructed and in operation from the town of Salisbury to the village of Norwood, in Stanly county; provided, that the said railroad company shall be required to begin the construction of said road at Salisbury within ninety days from and after the first day of October, 1889, and to complete the same to Norwood within eighteen months thereafter, and if not so begun and completed, then said bonds shall not be delivered to said company; provided, however, that the board of commissioners of Stanly county shall have full power and discretion to extend the time for the performance of the conditions and limitations hereinbefore mentioned.

Said railroad shall be of the standard *guage*.

It is hereby ordered that an entirely new registration of voters be made for said election as provided by law.

Restraining Order.

NORTH CAROLINA, *Stanly County.*

In the Superior Court.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and JAMES P. Nash and G. R. McCain
vs.
I. W. SNUGGS.

On reading the complaint, which is used as an affidavit in this motion, it is ordered that the defendant, I. W. Snuggs, appear
24 before A. L. Coble, judge, on the 7th day of June, 1897, at Statesville, and show cause why an injunction should not be granted until the hearing of this action.

It is further ordered that in the meantime the said defendant be and is hereby restrained against paying any part of the six thousand dollars and thirty dollars now in his hands, (which was collected for the purpose of paying the coupons on the Yadkin Railroad Company bonds, as — forth in the complaint), or any other money which is now or may hereafter come into his hands, to any of the holders of said coupons, or making any disposition whatsoever of the said money until the further order of the court.

It is further ordered that upon the plaintiffs executing an undertaking as required by section 341 of the code, in the sum of two hundred dollars that the clerk of the superior court of Stanly county do forthwith cause a copy of the same, together with a copy of the complaint, to be served by the sheriff of the said county upon the said defendant.

W. S. O. B. ROBINSON,
Judge Superior Court.

Undertaking.

NORTH CAROLINA, }
Stanly County. }

In the Superior Court.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and JAMES P. Nash and G. R. McCain
vs.
I. W. SNUGGS.

The undersigned do undertake in the sum of two hundred dollars, that the plaintiffs herein will pay to the defendant such damages as he may sustain by reason of the suing out of the above restraining order, should the court finally decide that the plaintiffs were not entitled thereto.

J. P. NASH, [SEAL.]
Chamn. B'd Commis.
J. S. EFIRD. [SEAL.]
J. L. PALMER. [SEAL.]
T. S. PARKER. [SEAL.]

STATE OF NORTH CAROLINA, }
Stanly County. }

Superior Court, May 25, 1897.

Personally appeared before me this day, J. S. Efird, J. L. Palmer and T. S. Parker, and acknowledged the due ex-
25 ecution of the foregoing bond, and each one for himself made oath that he is a freeholder in the State of North Carolina, and worth the sum of two hundred dollars over and above their personal property and homesaid exemption allowed by law and their liabilities.

S. H. MILTON,
Clerk Superior Court.

Answer.

NORTH CAROLINA, }
Stanly County. }

In the Superior Court.

BOARD OF COMMISSIONERS OF STANLY COUNTY, JAMES P. NASH, and G. R. McCain
vs.
I. W. SNUGGS.

The defendant, answering the complaint, says:

1st. That he has no knowledge or information sufficient to form a belief as to the truth of the allegation of the first paragraph of the complaint.

2nd. That the defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of the second paragraph of the complaint.

3rd. That the defendant is informed that the Board of County Commissioners of Stanly —— did make an order substantially as set out in the third paragraph of the complaint.

4th. That the allegations of the fourth paragraph of the complaint are admitted to be true.

5th. That, upon information and belief, the defendant admits the truth of the allegations of the fifth paragraph of the complaint.

6th. That upon information and belief, he admits the sixth paragraph of the complaint.

7th. Defendant says that all accrued interest on the bonds referred to in the complaint has been paid except thirty dollars.

8th. Defendant admits the truth of the allegations contained in the eighth paragraph of the complaint.

9th. That the defendant has no knowledge or information sufficient to form a belief as to any of the allegations made in
26 the ninth paragraph of the complaint, and he denies the same and demands proof thereof.

10. That as to the allegations of the — paragraph of complaint, defendant says that, as he is informed, the only election held in Stanly county in regard to the said bonds was that referred to in the fourth paragraph of the complaint.

11th. That as to the allegations of the eleventh paragraph of complaint, this defendant says that he is the *the* treasurer of the county of Stanly, and has given his bond and taken his oath of office as required by law, and he is advised that it is his duty to pay the interest accruing in July, 1897, on the bonds referred to in the complaint, whenever the coupons may be presented to him for payment after maturity; that his acts in regard to the payment thereof are not intended as a threat, but are intended to be such as he ought to lawfully perform in the discharge of his official duties; and if the court shall be of the opinion that the bonds referred to in the complaint are invalid, and that the county of Stanly is not liable to their payment, or to the payment of the interest on them, he prays the

court to make such order in the cause as will protect him, as he desires to perform his official duties in the premises according to law.

12th. The allegations contained in the twelfth and thirteenth paragraphs of the complaint are admitted to be true.

Wherefore, defendant prays the court:

1st. That he go without day and recover his costs.

2nd. That the court make such order in the cause as will protect him in the discharge of his official duties as treasurer of Stanly ——.

B. F. LONG,
Attorney for Defendant.

I. W. Snuggs, after being sworn, deposes and says, that the facts set forth in the foregoing answer as of his own knowledge are true and those stated on information and belief, he believes to be true.

I. W. SNUGGS.

Sworn to and subscribed before me this 7th day of June, 1897.

B. FRANK LONG,
Notary Public.

27 *Appeal Bond for Costs.*

STATE OF NORTH CAROLINA, *Stanly County.*

In the Superior Court.

THE BOARD OF COMMISSIONERS OF STANLY CO. and JAS. P. NASH and G. R. McCain
against
I. W. SNUGGS.

Whereas, on the 7th day of June, 1897, before his honor, Albert L. Coble, judge, at chambers, in Statesville, it was ordered and adjudged that the restraining order be continued to the hearing and the defendant be enjoined against paying any of the six thousand dollars and the thirty dollars now in his hands.

And, whereas, the appellant intends to appeal from said judgment to the supreme court;

Now, therefore, we, I. W. Snuggs, of the county of Stanly, and R. F. Tyson, of Norwood, Stanly Co., undertake pursuant to the statute, that the said appellant shall pay all cost and damages that may be awarded against him on such appeal, not to exceed the sum of twenty-five dollars.

I. W. SNUGGS. [SEAL.]
R. F. TYSON. [SEAL.]

Witness:
S. H. MILTON.

R. F. Tyson, maketh oath that he is a resident of N. C., and is worth over and above his liabilities, and his property exemption by law, the sum of $25.00.

Sworn to and subscribed before me this 29th day of July, 1897.

S. H. MILTON,
Clerk Superior Court.

NORTH CAROLINA, }
Stanly County. }

Superior Court.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY, JAMES P. Nash, and G. R. McCain
vs.
I. W. SNUGGS.

This was a civil action brought to Stanly county superior
28 court to enjoin the payment of the interest on certain bonds mentioned in the pleadings, and heard on return of the notice to show cause, by consent of parties, at chambers, at Statesville, N. C., before A. L. Coble, judge.

The cause was heard upon summons, complaint used as affidavit and answer thereto with transcript of the journals of the house of representatives for the years 1870–'71, 1879 and 1887, marked, respectively, Exhibits A, B and C, of counsel, and it was adjudged by the court and argument that the restraining order heretofore issued be continued to the hearing of the cause.

From the judgment of the court the defendant appealed. Notice of appeal was waived and bond fixed at twenty-five dollars.

It was agreed by counsel that the summons, complaint, answer, the three Exhibits A, B and C, and the judgment, together with this statement should constitute this case on appeal. This June 7th, 1897.

B. F. LONG AND
FRANK LONG,
Att'r's for Def't.

A. C. AVERY,
D. SCHENCH, JR.,
SHEPARD & BUSBEE,
Counsel for Plaintiffs.

Order.

NORTH CAROLINA, }
Stanly County. }

In the Superior Court.

BOARD OF COMMISSIONERS OF STANLY COUNTY, JAS. P. NASH, and G. R. McCain
vs.
I. W. SNUGGS.

This motion coming on to be heard before me at Statesville, North Carolina, on June 7th, 1897, pursuant to a restraining order of his honor, W. S. O. B. Robinson, heretofore granted, and the

plaintiffs being represented by counsel, and the defendant being present and also represented by counsel, and its being agreed by all of the parties that the hearing should be had on this day and at this place before his honor, Judge A. L. Coble, and the same being heard upon the complaint and answer used as affidavits and the exhibits filed herein marked A, B and C, his honor ordered and adjudged that the restraining order heretofore issued be continued to the hearing, and that the defendant be enjoined against paying any of the six thousand dollars and the thirty dollars now in his hands which was collected for the purpose of paying the coupons
29 on the Yadkin Railroad Company bonds as set forth in the complaint, or any other money which is now, or may hereafter come, in his hands which shall arise from a levy of tax made to meet the said interest, to any of the stockholders of said coupons, or making any disposition of said money until the final hearing of this cause. This June 7th, 1897, at chambers, Statesville, N. C.

ALBERT L. COBLE,
Judge Superior Court.

From this order the defendant, I. W. Snuggs, appeals to the supreme court. Notice waived. Bond fixed in the sum of twenty-five dollars. It was agreed by counsel that the summons, complaint, answer, Exhibits A, B, C, and the judgment of the court, together with statement signed by counsel, shall constitute the cause on appeal.

The clerk of the superior court of Stanly county will make transcript hereof, with exhibits, for the supreme court.

ALBERT L. COBLE,
Judge Superior Court.

House of representatives.

RALEIGH, *February* 18, 1887.

The house meet this morning at 10 o'clock.

Bills and resolutions are introduced and disposed of as follows:

S. B. 395, H. B. 954, a bill to be entitled An act to amend the charter of the Yadkin Railroad Company, chapter 236, Laws of 1870-'71.

Referred to the committee on internal improvements.

House of representatives.

Forty-fifth day.

FEBRUARY 25, 1887.

The house meets this morning at 8 o'clock.

The reports of committees.

From the committee on internal improvements.

By Mr. Blevius S. B. 395, H. B. 954, a bill to amend the charter of the Yadkin Railroad Company, chapter 236, Laws of 1870-'71. Recommending that it do pass as amended.

House of representatives.

Forty-fifth day.

RALEIGH, *Feb.* 26, 1887.

Calender.

S. B. 395, H. B. 954, a bill to amend the charter of the Yadkin Railroad Company passes the second reading by the following vote, and takes its place on the calender:

Messrs. Abell, Alleman, Ashcraft, Benson, Bennett, Bingham, Blevius, Blount, Brogden, Candle, Chappell, Cheek, Cherry, Chitentt, Caffey, Copeland, Crawford of Haywood, Crawford, of McDowell, Crenshaw, Crisp, Croone, Daughton, Deave, Dorsett, Ellis, Evans, Franklin, Felton, Freis, Gray, Green, Halstead, Hampton, Harrington, Hayes, Hinton, Holloway, Holman, Hill, Hussey, Jordan, Kell, King, Lindsey, Lyon, Macon, Mangum, Manning, Morton, Mears, Moore, Morgan, McClure, McKinnon, McMillan, Newson, Oakley, Osborne, Overman, Parham, Paschall, Pinnix, Pittman, Pritchett, Redding, Shaw, Snell, Snipes, Sowell, Southerland, Sutton, Surratt, Swain, Thomas, Turner, Ward, Watson, of Hyde, Watson, of Vance, Waters, Watts, Webster of Caswell, Wells, White, of Halifax, White of Perquimans, Williams, Williamson, Wilson, Woody, Worth, Yorke, Yergo.

House of representatives.

Forty-seventh day.

RALEIGH, *Feb.* 28, 1887.

Calender.

S. B. 395, H. B. 954, a bill to amend the charter of the Yadkin Railroad Company, chapter 236, Laws of 1870–'71, passes its several readings, and is ordered enrolled.

House of representatives.

Fiftieth day.

RALEIGH, N. C., *Mar. 3rd*, 1887.

The house meets at 9.30 o'clock a. m.

Mr. Bingham from the committee on enrolled bills reports the following bills and resolutions, which were duly ratified and sent to the office of secretary of state:

S. B. 395, a bill to amend the charter of H. B. 954, the Yadkin Railroad Company, chapter 236, Laws of 1870–'71.

STATE OF NORTH CAROLINA, }
Office of Secretary of State. }

I, Cyrus Thompson, secretary of state, do hereby certify that the foregoing three sheets are true copies of the original journals of the session of 1887 of the house of representatives of the General Assembly of North Carolina, on file in this office, so far as the same relates

to the action of said house on "S. B. 395, H. B. 954, a bill to
31 be entitled An act to amend the charter of the Yadkin Rail-
road Company, chapter 236, Laws 1870–'71."

Given under my hand and official seal this 5th day of June, A. D., 1887.

CYRUS THOMPSON, *Sec. State.*

Evening session.

House of representatives.

THURSDAY, *Feb.* 20, 1879.

The house meets this evening at half past seven o'clock, Mr. Moring in the chair.

A message from the senate is announced transmitting S. B. 342, a bill to amend an act to incorporate the Yadkin Railroad Company, ratified April 5th, 1871.

They are read the first time in this house and — S. B. 342, to the committee on railroads, etc. —.

House of representatives.

SATURDAY, *February* 22, 1879.

The house meets this morning at 10 o'clock.

Mr. Leatherwood from the committee on railroads, post-roads and turnpikes, reports favorably on S. B. 342, H. B. 728, a bill to amend an act to incorporate the Yadkin Railroad Company, ratified April 5th, 1871.

House of representatives.

WEDNESDAY, *Feb. 26th*, 1879.

Evening session.

WEDNESDAY, *Feb. 26th.*

The house meets at half past 7 o'clock.

S. B. 342, a bill to amend an act to incorporate the Yadkin Railroad Company, ratified April 5th, 1871, is announced; but pending consideration, the house yields to the motion to adjourn, and the bill comes up tomorrow as the unfinished business.

House of representatives.

THURSDAY, *Feb. 27th*, 1879.

The house opens this morning at 10 o'clock.

The unfinished business of last night's session, being S. B. 342, a bill to amend an act to incorporate the Yadkin Railroad Company, ratified April 5th, 1871, is announced; and the bill is put on its readings and passes, and is ordered to be enrolled for ratification.

32 Mr. Lockhart moves to reconsider the vote by which the bill passes, and to lay that motion on the table, and the motion to table prevails.

House of representatives.

TUESDAY, *March 4th*, 1879.

The house meets this morning at 10 o'clock.

The committee on enrolled bills reports as correctly enrolled an act to incorporate the Yadkin Railroad Company, ratified April 5th, 1871.

STATE OF NORTH CAROLINA, }
Office of Secretary of State. }

I, Cyrus Thompson, secretary of state, do hereby certify that the foregoing five (5) sheets are true copies of the original journals of the house of representatives of the General Assembly of North Carolina, at its session of 1879, on file in this office so far as the same relates to "S. B. 342, a bill to amend an act to incorporate the Yadkin Railroad Company, ratified April 5th, 1871."

Given under hand and official seal, this fifth day of June, 1897.

CYRUS THOMPSON,
Secretary of State.

THURSDAY, *Mar.* 30, 1871.

A message was received from the senate transmitting S. B. 678, to incorporate Yadkin R. R. Co.

Reports of committee.

FRIDAY, *Mar.* 31, 1871.

Mr. Broadfoot from committee — corporations reported asking reference to committee on internal improvements of S. B. 678, An act to incorporate the Yadkin Railroad Company.

SATURDAY, *April 1st.*

Mr. Welch from committee on internal improvements reported favorably on H. B. 700, S. B. 678, An act to incorporate the Yadkin Railroad Company.

MONDAY, *April 3rd*, 1871.

S. bill on 2nd reading to incorporate the Yadkin Railroad Company was taken up and passed 2nd and 3rd reading and ordered enrolled.

WEDNESDAY, *April 5th*, '71—3.30 p. m.

33 Mr. Currie from committee on enrolled bills reported the following bills as correctly enrolled and they were ratified: An act to incorporate the Yadkin R. R. Company.

STATE OF NORTH CAROLINA, }
Office of Secretary of State. }

I, Cyrus Thompson, secretary of state, do hereby certify that the foregoing two (2) sheets are true copies of the original journals of the house of representatives of the General Assembly of North Carolina,

at its session of 1870–'71, on file in this office, so far as the same relates to S. B. 678, H. B. 700, An act to incorporate the Yadkin Railroad Company, ratified April 5th, 1871.

Given under my hand and official seal this (5) fifth day of June, 1897.

CYRUS THOMPSON,
Secretary of State.

NORTH CAROLINA, }
Stanly County. }

Spring Term, 1898.

COMMISSIONERS OF STANLY COUNTY, J. P. NASH, & McCAIN }
vs. }
I. W. SNUGGS. }

This cause coming on to be heard before his honor, Judge Green, and being heard upon the pleadings, proof and exhibits;

It is ordered and adjudged in accordance with the opinion of the supreme court, that the bonds described in the complaint herein are void, and that the injunction heretofore granted be and is hereby made perpetual.

It is further adjudged that the plaintiffs do recover of the defendant $— costs to be taxed by the clerk.

L. L. GREENE,
Judge Presiding.

34 *Opinion of the Supreme Court N. C.*

N. C. Supreme Court, Stanly Co., Sept. Term, 1897.

COMMISSIONERS OF STANLY —— }
vs } No. 405.
I. W. SNUGGS, Appellant. }

Long and Long and Battle and Mordecai for appellant; A. C. Avery, D. Schenck, Jr., and Sheperd & Busbee for appelle-.

MONTGOMERY, *J.:*

On the 15th of August, 1889, at an election held in Stanly county, a majority of the voters of the county cast their ballots in favor of the subscription to the capital stock of the Yadkin Railroad Company to the amount of one hundred thousand dollars. Bonds of the county to that amount were issued in payment of the subscription and delivered to the president of the company. The annual interest has been paid regularly except that accruing on the first of July, 1897, which has been collected and is now in the hands of the defendant, who is the treasurer of the county, and who is about to pay it to the holders of the coupons. The plaintiffs, taxpayers of the county, and the board of commissioners, bring this action, alleging that the Acts of 1870–'71, ch. 236, and the Acts of 1887, ch. 183, under which the commissioners attempted to act, and

under which the election was held were void, for the reason that they were not passed as required by section 14 of article 11 of the constitution, and that the bonds were, therefore, illegally issued, and they pray that the treasurer of the county, the defendant, be perpetually enjoined from paying the sum now in his hands, or any other sums which may hereafter come into his hands, to the holders of the coupons. The matter was heard beforce Coble, judge, and the restraining order theretofore granted was continued, and the defendant enjoined from paying out the money in his hands until the final hearing of the case.

The act of incorporation of the Yadkin Railroad Company, ch. 236, of the laws enacted by the General Assembly of North Carolina, at its session of 1870–'71, in its fourth section, made provision for subscription to be made to the capital stock of the company by any county, along the line of the road to such amount as a majority of the county commissioners might determine, subject to the approval of the qualified voters of the county; the commissioners, in order to pay the subscription, being empowered to issue bonds for that purpose and to levy taxes to pay the bonds and interest upon them. Section 4 of the act of incorporation was amended by chapter 183 of the Laws of 1887, the amendment extending the privilege of subscribing for stock of the company to the towns and cities and townships along the line of the road and requiring the subscription to be approved by a majority of the qualified voters of such cities, towns and townships. And providing further that bonds should be issued in payment of said subscription and taxes levied to pay the same, principal and interest, according to the terms and conditions of said bonds, and that the board of commissioners of the county should issue the bonds and levy the taxes to pay the township subscription, section 14 of article 11, of the constitution ordains that "no law shall be passed to raise money on the credit of the State or to pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly, and passed three several readings, which readings shall have been on three different days, and agreed to by each house, respectively, and unless the yeas and nays on the second and third reading- of the bill shall have been entered on the journal."

The plaintiffs were allowed to produce copies of the House Journal certified by the secretary of state, to show that the above-mentioned acts were not passed by the General Assembly in accordance with the requirements of the constitution. That journal showed that the bill which became chapter 236 of the Laws of 1870–'71, was introduced on the 31st of March, 1871, and referred to the committee on internal improvements; that it was reported favorably on the next day, and that on the 3rd of April, two days after its introduction, it passed its second and third readings, and that there was no entry of the yeas and nays on either of its readings. From that journal it appears that the bill which was enacted into chapter 183

of the Laws of 1887, passed its second reading on February 26th, and that the yeas and nays were called on that reading and entered on the journal; that the bill passed its third reading on the 28th of February, but the yeas and nays were not entered on the journal on that reading.

We are of the opinion that it was competent to introduce the house journal as proof that the acts referred to were not passed according to the requirements of the constitution, and they
36 establish that fact. That provision of the constitution (sec. 14 of article 11) is mandatory, as we have decided in Bank vs. Commissioners, 119 N. C., 214.

It is the protection which the people, in convention, have thrown around themselves for the benefit of the minority as well as of the majority. The object of the provision was to prevent hasty and ill-advised legislation by means of which the people might be deprived of their property, not for the ordinary expenses of government, but by special taxation for enterprises ostensibly in the name of the public good, but which might prove sources of individual injustice and injury when indebtedness of the kind mentioned in the provision is sought to be incurred, the people have said, in that provision, that their legislative body whenever considering the propriety of authorizing it, shall be not only careful but deliberate; that the bill shall be read three several times and pass three several readings, and that no two readings of the bill shall be had on the same day, and that the names of the legislators who vote on the question shall be known to the people by the enrollment of their names on the journal. It is a reasonable requirement, too, and especially serviceable to those who are property-holders and tax-payers, and the information is easy to be had by all who may be interested, for section 16 of the same article of the constitution ordains that each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

But, therefore, it is clear that in legislation in reference to raising money on the credit of the State, or pledging its faith to the payment of debt, or imposing any tax on the people of the State, or allowing the counties, cities or towns to do so, the constitution itself ordains that such legislation is void unless the bills have passed three separate readings on three different days, and unless the yeas and nays on the second and third reading shall have been entered on the journal. The bill may, in point of fact, have been read three several times and on three different days, and the yeas and nays may have been actually called on the second and third readings, and the presiding officers may have certified thereto, and, yet, if the entry of the yeas and nays is not actually made on the journal, the constitution, speaking with absolute clearness, says that the failure of such entry is fatal to the validity of the act. The entry, showing who voted on the bill and how they voted, must be made before the bill can ever become a law. The constitution does not allow the certificate of the presiding officers or any other power to cure such an omission. The

certificate of these officers will be taken as conclusive of
37 the several readings in ordinary legislation, even if — could be made to appeal that the journals were silent in reference thereto, because, in ordinary legislation, the directions of the constitution are not a condition precedent to the validity of the act. But in that class of legislation the purpose of which is to legislate under section 14 of article 11 of the constitution a literal compliance with the language of that section is a condition precedent and one which must be performed in its entirety before the bill can ever become a law. This point, however, has been so recently and so thoroughly discussed in the case of Bank *vs.* Commissioners, *supra*, that it will be unprofitable to enter into another protracted discussion of it here. The authorities there cited are numerous and most of them directly in point.

This case is clearly to be distinguished from that of Carr *vs.* Coke, 116 N. C., 223, and the difference cannot be pointed out more clearly than was done by Clark, J., who delivered the opinion in Bank *vs.* Commissioners, *supra*, in the following language:

"This case has no analogy to Carr *vs.* Coke, 116 N. C., 223. That merely holds that when an act is certified to by the speakers as having been ratified, it is conclusive of the fact that it was read three several times in each house and ratified, const., art. 11, sec. 23. And so it is here, the certificate of the speakers is conclusive that this act passed three several readings in each house and was ratified. The certificate goes no further. It does not certify that this act was read on three several days in each house, and that the yeas and nays were entered on the journals. The journals were in evidence and showed affirmatively the contrary.

The people had the power to protect themselves by requiring in the organic law something further as to acts authorizing the creation of bonded indebtedness by the State and its counties, cities and towns, than the fact certified to by the speakers of three readings in each house, and ratification. This organic provision plainly requires, for the validity of this class of legislation, in addition to the certificates of the speakers, which is sufficient for ordinary legislation, the entry of the yeas and nays on the journals on the second and third readings in each house. It is provided that such laws are no laws; *i. e.* are void unless the bill for the purpose shall have been read three several times in each house of the General Assembly, and passed three several readings, which readings shall have been on three different days, and agreed to by each house respectively, and unless the yeas and nays on the second and third
38 readings of the bill shall have been entered on the journal."

But the defendant for his protection presents the view that even if it be conceded that the acts above referred to were not passed according to the requirements of the constitution and for that reason might be held void by this court, yet the commissioners of the county had the right to submit the question of subscription, embracing the question of issue of bonds and the levy of taxes to pay the same principal and interest, to the voters of the county, and upon approval by a majority of the qualified voters to issue the bonds under sec-

tions 1896, 1997, 1998 and 1999 and 2000 of the code. All the sections of the code were enacted by having been read three several times in each house of the General Assembly, having passed three several readings on three different days in either house, the yeas and nays on the second and third readings having been entered on the journals of the senate and house of representatives, respectively.

But did the sections above mentioned give additional and complete authority to order the election, issue the bonds and levy the taxes to pay them, principal and interest? Section 1996 is in the words: "The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

It will be necessary, in order that that section may be construed, to give authority to the commissioners to issue the bonds, that language should include a railroad not begun to be built before the subscription was made; that the word "completion" should be construed building, or construction, extending even to the building of a new road; for in the case before us it appears that the road had not begun to be built. We cannot see why the word "completion" should be thought to have been used by the legislators in any other sense than the one most usual and natural.

Ordinarily, the words "to complete" are understood to mean to finish, to fulfill, and the word "completion" to mean the finishing or accomplishing in full of something which has already been commenced, as for instance, it is most frequent to hear the word "completion" used in connection with the finishing years and months of the education of the young man. It is said of the young man or the young woman that her or she has gone for this year or this session to a certain university for the completion of his or her education, the training or educational process having been going on for years.

39 If there is uncertainty as to the meaning of the word "completion" as used in section 1996 of the code, we might invoke the aid of section 4 (formerly 5) of article V of the constitution in its analogy to the code section, to clear it up. The part of that section of the constitution pertinent to this matter, reads as follows:

"And the General Assembly shall have no power to give or lend the power to the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon."

Thus it appears that all gifts or loans by the State in aid of the completion of such railroads as had been begun, but which were unfinished at the time of the adoption of the constitution, or in which the State has a direct pecuniary interest, could be made valid by simple act of legislation. The act of 1868–'9, ch. 171, (now sec-

tion- 1996, 1997, 1998, 1999, and 2000 of the code) was enacted a few days more than a year after the ratification of the constitution of 1868. It is most reasonable to conclude that the policy and purpose of both the constitutional provision and the statute were the same, the only difference being that, in case of State aid, no approval by a vote of the people was required, while a majority vote of the people was required in cases of county aid. The object of the statute must have been to provide by a general act means by which the counties, without special legislation for each county by separate bills, might be enabled to complete unfinished railroads in which the counties had a pecuniary interest. At the time of the enactment of the statute of 1868–'9, and always since that time, any county of the State duly observing the limitations of sec. 7, of article VII of the constitution, and under an act passed according to the requirements of section 14, art. 11, of the constitution, could and can subscribe to the capital stock of the railroad company, whether unfinished or to be begun. The act of 1868–'9, however, considering the condition of affairs then existing, that is, that there were counties which had a pecuniary interest in railroads that had been begun but were unfinished, enabled such counties to make subscriptions of bonds to complete such unfinished roads at the earliest moment and with the least cost, by a general law passed according to section 14, art. 11, of the constitution.

This reasoning leads us to the still further conclusion that
40 at the time when the act of 1868–'9 was brought forward in the code, section 1996 and the four succeeding sections, it could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads, at the adoption of the constitution of 1868, and that therefore, the code sections could not apply to the present case, because the Yadkin railroad was not begun to be constructed until about 1889. We have given to the matters embraced in this case a patient and thorough consideration. We are aware of the hardships and losses that may follow from our decision, and we are also aware of the probable complaints likely to be made by persons interested. But the constitutional requirement which we have discussed is clear in its meaning and in its language, and it is also mandatory. We must obey it in our interpretation of its meaning. Investors in such securities who may meet with losses have no one to blame but themselves, for the journals of the General Assembly are open to public inspection, and the constitution of the State is a part of the public literature.

The purchaser of real estate with us must look to the depositories of his title for the security of his purchase, and so must the investors in our State and county and municipal bonds look to the constitution and the laws for the safety of their investments.

We find no error in the ruling of the court below, no error.

A true copy.

THOS. S. KENAN, *S. C. C.*

Judgment.

September Term, 1897.

NORTH CAROLINA, *Stanly County.*

Supreme Court.

COMMISSIONERS OF STANLY CO. *vs.* I. W. SNUGGS ET AL. } No. 450.

This cause came on to be argued upon the transcript of the record from the superior court of Stanly county; upon consideration whereof, this court is of opinion that there is no error in the record and proceedings of the said superior court.

It is therefore considered and adjudged by the court here, that opinion of the court as delivered by the Honorable W. A.
41 Montgomery, justice, be certified to the said superior court, to the intent that the judgment be affirmed. And it is considered and adjudged further that the defendant and surety, R. F. Tyson, do pay the costs of the appeal in this court incurred, to wit, the sum of seventeen $\frac{90}{100}$ dollars ($17.90), and let execution issue therefor.

THOS. S. KENAN, *S. C. C.*

STATE OF NORTH CAROLINA, *Stanly County.*

Superior Court, March 29, 1898.

I, S. H. Milton, clerk of the superior court of the aforesaid county and State, hereby certify that the foregoing is a true copy of all the record in case of The Board of Commissioners of Stanly County and Jas. P. Nash and G. R. McCain *vs.* I. W. Snuggs; including the summons, complaint, answer, exhibits, restraining order, appeal bond, judgment of supreme court, judgment of the superior court at spring term, 1898.

In witness whereof I have hereunto set my hand and the seal of said court, at office, in the town of Albemarle, date above written.

S. H. MILTON,
Clerk Superior Court, Stanly Co., N. C.

Endorsement: Filed in this office June 13, 1898. H. C. Cowles, clerk.

Answer.

United States Circuit Court, Western District of North Carolina.

W. N. COLER, W. N. COLER, JR., BIRD S. COLER, and Francis W. Coler, Bankers, under the Name and Style of W. N. Coler and Company, Complainants,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF STANLY County and I. W. Snuggs, Treasurer of Stanly County, Respondents.
} In Equity.

The separate answer of I. W. Snuggs, now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to
42 the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof, as this defendant is advised it is material or necessary for him to make answer, answering sayeth:

First. That it is true that he is treasurer of Stanly county, and has — his hands the sum of six thousand dollars, but he denies that the said sum, or any part thereof, is due the alleged holders of the bonds and coupons mentioned in the bill of the complainants, and the defendant further denies that the said bonds and coupons are the valid obligations of the said county, the same having been declared invalid and void by the supreme court of North Carolina in an action brought by the board of commissioners of said county against this defendant, which action will hereinafter be more particularly set forth.

Second. That this defendant has not been informed and has no sufficient information upon which to found a belief as to the allegations contained in the second paragraph of the bill.

Third. The defendant, further answering, sayeth he knows not, nor has he been informed, except by the averments in the complainants' bill and cannot set forth as to his belief otherwise, whether or not the complainants bought for valuable consideration forty-eight (48) Stanly County bonds of the denomination of one thousand dollars ($1,000) each, and thirty-six (36) Stanly County bonds of the denomination of five hundred dollars ($500) each—and all bearing interest payable annually—nor whether plaintiff bought said bonds in good faith and without notice of the said bonds having been issued contrary to law.

Fourth. That in respect to the matters set forth in paragraph four of the complainants' bill, this defendant denies that the bonds mentioned therein were issued in pursuance of any power vested in or conferred upon the board of commissioners of said county, and this defendant, further answering, sayeth, he knows not, and has not been informed, save by the said complainants' bill, and cannot set forth his belief or otherwise whether any of the said bonds were sold or have been in the possession of *bona fide* holders, as alleged

in paragraph four of complainants' bill, or whether any of said bonds or coupons were purchased, and are now held by complainants, as stated in paragraph five of the said bill. This defendant denies that any interest is due and payable on said bonds, as set forth in said paragraph five, for that the said bonds are and have been declared invalid and void, as will be hereinafter more particularly stated.

43 Fifth. This defendant further sayeth that it is true, as stated in paragraph six of complainants' bill, that the said sum of six thousand dollars was collected of the tax-payers of Stanly county by reason of a levy made by its board of commissioners, in pursuance of a supposed power vested in them by law, for the purpose of paying the interest on said bonds, but this defendant is advised, and so alleges, that the said levy was unauthorized by reason of the said bonds being invalid and void, as will hereinafter be more particularly stated.

This defendant further sayeth that it is true that he has refused to pay any part of said sum to the complainants, the alleged holders of some of said bonds and coupons, because the same are invalid and void, as will be hereinafter more particularly stated, and, also, because the same have been declared invalid and void by the supreme court of North Carolina, and this defendant enjoined against paying any part of the same by way of interest or principal on said bonds, all of which will be more particularly stated hereafter. This defendant, in further answer to said paragraph sixth of complainants' bill, denies that he occupies any fiduciary relation whatever as agent, quasi agent or trustee, or otherwise to the complainants or to any of the bond or coupon holders in respect to said sum of money, and this defendant further sayeth that he holds the same simply by reason of his office as treasurer of said county, and subject only to the order and demands of its board of commissioners.

Sixth. This defendant, further answering, sayeth that it is true, for the reasons above set forth, that he has not paid to or accounted with complainants for any of said sum, and defendant further sayeth that it is true that the said board of commissioners have obtained an injunction restraining this defendant from paying out any part of said sum or any of said bonds or coupons. The facts in reference to said injunction are as follows: That on the 7th day of June, 1897, the said board of commissioners of Stanly county and Jas. P. Nash, a tax-payer, instituted an action against this defendant in the superior court of Stanly county, the object of said action being to have said bonds declared invalid and void, and to restrain this defendant from paying any part of the moneys aforesaid on the said bonds or coupons. That in said action the plaintiffs sued out a temporary injunction or restraining order, and upon motion to continue the same to the final hearing, Hon. A. L. Coble, a judge of the superior court of the State of North Carolina, after consider-

44 ing the pleadings, affidavits and exhibits of the respective parties, ordered that the said injunction should be continued to the hearing.

That this defendant, desiring to perform his duties in the premi-

ses, appealed to the supreme court of said State, which court declared that the authorities of said county had no power to submit the question of subscription by the county to the Yadkin Railroad Company or the issue of bonds for the payment of the same to the qualified voters of said county, and the said court declared that the said bonds and coupons issued in pursuance of such supposed authority and vote were invalid and void *ab initio*. That thereafter, the opinion and judgment of the supreme court having been duly certified to the superior court of said county of Stanly, the said superior court, at the spring term thereof for the year 1898, did render a final judgment declaring the said bonds and coupons invalid and void and perpetually enjoined this defendant from paying of said monies on the same, all of which proceedings are more particularly set forth in Exhibit "A" of the answer of the board of commissioners herein, which part of said answer this defendant refers to for convenience without setting forth the same fully here as a part of his answer. That at the hearing before Judge Coble, referred to as aforesaid, this defendant appeared, by his attorney, and caused every contention which could be deemed revelant favoring the validity of the said bonds to be presented to said judge, and afterwards, on defendant's appeal, caused such just contention to be presented to the supreme court favoring the validity of the said bonds; that he is informed that his attorney, in preparing his brief for the supreme court, maintaining the regularity and validity of said bonds, requested the assistance of certain attorneys, whom respondent's attorney learned represented certain bondholders, with the sanction and approval of this defendant, and offered to adopt and present any authorities or brief that might be suggested by them in support of the validity of said bonds, without in anywise making said bondholders parties to said proceedings; that one of the said attorneys, representing certain of said bondholders, a man learned in the law, responded to said request and aided respondent's attorney in arguing said case in the supreme court. That these facts are set forth not to prejudice the rights of any bondholder—none of whom were parties to the record in said suit—but that the court may know the fact that this defendant, through and by his attorney, aided by one of the attorneys representing an owner of these bonds, has done all in his power he could do to establish the validity of these bonds.

45 Seventh. This defendant further sayeth, in respect to paragraph- 8, 9, 10, 11, 12 and 13 of the bill (which) more particularly apply to his codefendant, The Board of Commissioners, that he denies any purpose on his part to repudiate the honest debt or debts of the county. This defendant further sayeth, in respect to the laws referred to in paragraphs 9 and 10 of the bill, the general laws, sections 1996, 1997, 1998 and 1999 of the Code of North Carolina do not authorize the vote, subscription and issue of said bonds, and that such is the construction put upon said provisions by the supreme court of North Carolina. That as to the act of 1870, referred to in paragraph 9, the same was not passed in accordance with the constitution of North Carolina, article 11, section 14, in that

it did not pass three several readings on three different days in the house of representatives, and in that the yeas and nays were not called on the second and third readings, nor were the same entered on the journal. That as to the act of 1887, referred to in the paragraph 9, the same was not passed in accordance with the provisions of the constitution of North Carolina, article 11, section 14, in that the yeas and nays were not called on the third reading thereof in the house of representatives, nor entered upon its journal.

Eighth. That as to the benefits to said county and its lands by reason of the building of said road and other matters alleged in paragraph- 11, 12 and 13, this defendant adopts the answer of the codefendant, The Board of Commissioners of said county.

Ninth. That as to the allegations contained in paragraph 14, this defendant denies that he has any intention to make way with or dispose of the sum of money mentioned in the bill or that he is a trustee or has committed any breach of trust in refusing to pay said money under the circumstance set forth in this answer. And this defendant further sayeth that he expects to hold the said sum of money and disburse the same according to law.

Tenth. This defendant further sayeth that all matters stated in complainants' bill inconsistent with the responses and allegations of this answer are untrue and he denies the same. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this that there is any other matter, cause or thing in the said complainants' bill of complaint contained, material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided *and avoided* or
46 denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct.

And this defendant submits to this honorable court that all and every of the matters in said plaintiffs' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which said plaintiffs are not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defense as if he had demurred to the said plaintiffs' bill.

Wherefore this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

LONG AND LONG,
Solicitors for I. W. Snuggs.

I. W. Snuggs, being duly sworn, deposes and says, that the facts set forth in the foregoing answer are true of his own knowledge, except as to those matters therein set forth upon information and belief, and as to those matters he believes — to be true.

I. W. SNUGGS.

Sworn and subscribed before me this, the 14th day of April, 1898.

[SEAL.] S. H. MELTON,
Clerk Superior Court, Stanly County, N. C.

Endorsement: Filed in this office Apr. 15, 1898. H. C. Cowles, clerk.

47 *Replication to Answer Board of Commissioners of Stanly County.*

United States Circuit Court, Western District North Carolina.

CHARLOTTE, N. C., *June 17th*, 1898.

COLER AND COMPANY, Complainants,
vs.
COMS. STANLY COUNTY and I. W. SNUGGS, Respondents. } In Equity.

Replication.

The complainants come and file this their replication to the answer *to* the respondent, The Board of Commissioners of Stanly County, and say:

1. That they reiterate and reaffirm the allegations contained in their original bill.

2. That the allegations contained in the answer of the respondent, denying the allegations or any of the same, and matters and things set out in complainants' bill, are not true.

3. That the allegations of matters and things, as set out in the answer of said respondent, not in denial of the allegations in the bill, but set up as a defence, are not true, and are denied.

4. That denying the said allegations of respondent, and reiterating the allegations contained in the bill, complainants are ready to prove the truth of the matters and things, entitling them to the relief demanded in the bill.

CHAS. PRICE,
Solicitor for Complainants.

Chas. Price, being sworn according to law, says that, he is the att'y and sol. of the complainants, and that this replication is true.

CHAS. PRICE.

Sworn to and *and* subscribed before me this 17th June, 1898.

H. C. COWLES, *Clerk.*

Endorsement: Filed this 17th of June, 1898, by leave of court. H. C. Cowles, clerk.

48 *Replication to Answer of I. W. Snuggs.*

United States Circuit Court, Western District North Carolina.

CHARLOTTE, N. C., *June 17th*, 1898.

COLER & Co., Complainants,
vs.
BOARD OF COMS. OF STANLY CO. and I. W. SNUGGS, Respondents. } In Equity.

Replication.

The complainants come and filed this their replication to the answer of respondent, I. W. Snuggs, and say:

1. That they reiterate and affirm the allegations contained in their original bill.

2. That the allegations contained in the answer of the respondent, denying the allegations or any of the same, and matters and things, set out in complainants' bill, are not true.

3. That the allegations of matters and things, as set out in the answer of said respondent, not in denial of the allegations of the bill, but set up as a defence, are not true and are denied.

4. That, denying the said allegations of respondent and reiterating the allegations contained in the bill, the complainants are ready to prove the truth of the matters, entitling them to the relief demanded in the bill.

CHAS. PRICE,
Solicitor for Complainants.

Chas. Price, being sworn according to law, says that he is the att'y and sol. of the complainants, and that this replication is true.

CHAS. PRICE.

Sworn to and subscribed before me this 17th of June, 1898.

H. C. COWLES, *Clerk.*

Endorsement: Replication to answer of I. W. Snuggs, filed by leave of court 17th of June, 1898. H. C. Cowles, clerk.

49 And the said cause coming on to be heard at the said June term, 1898, of the said court, and being argued, and the argument concluded, the court takes the papers.

Thereafter, to wit: on August 13th, 1898, as of said June term, 1898, the following opinion, decree and order for injunction is filed, to wit:

Opinion, Decree, and Order for Injunction.

THE UNITED STATES OF AMERICA,
Western District of North Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. N. COLER AND COMPANY
vs.
THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, County Treasurer. } No. 42.

This is an application for an injunction to be directed to the Board of Commissioners of Stanly County and I. W. Snuggs, treasurer of the county.

The case arises in this way. The Yadkin Railroad Company is a corporation created under the law of the State of North Carolina, authorized to construct a railroad from Salisbury south to Norwood, a point in the county of Stanly.

The corporation was created by an act of assembly in 1870, and the charter was amended by an act passed in 1887.

Under the provisions of the amended act, the county of Stanly was expressly authorized to subscribe to the capital stock of this railroad. The question having been duly submitted to a popular vote of the people of this county, by an overwhelming majority a subscription was authorized of $100,000, to be made in coupon bonds, some in the denomination of $1,000, and some in that of $500, bearing interest at the rate of six per cent. per annum, payable on the first of July in each year. The county commissioners, in accordance with this authorized subscription, prepared and issued one hundred thousand dollars face value of bonds, delivered them to the railroad company, and received certificates of stock to the amount thereof, which certificates are still held for the county. The bonds were placed on the market and were all sold to the *bona fide* purchasers for value, among others to the trustees of the University of North Carolina. Each of these bonds on its face declares
50 that it is one of a series issued by authority of an act of the General Assembly of North Carolina, ratified 3rd March, 1887, and of sections 1996, 1997, 1998 of the Code of North Carolina, and authorized by a majority vote of the qualified voters of Stanly county, at an election regularly held for that purpose 15th August, 1889, duly ordered by the board of county commissioners, issued to pay the subscription made by Stanly county to the capital stock of the Yadkin Railroad Company.

Under the terms of the act, a tax was to be levied each year to pay the coupons on these bonds. In accordonce therewith, such tax was duly levied each year for four successive years, and the coupons paid from the proceeds thereof. The tax for the fifth year was duly levied and collected, and is in the treasury of the county. The county commissioners, having become convinced that the bonds

were illegally issued, instituted proceedings in a State court of North Carolina, against the treasurer of the county, praying that he be enjoined from paying any more coupons on these bonds. This injunction was thereupon issued by said court on the grounds of the invalidity of the bonds to which said coupons belonged, and its action in the premises was confirmed by the supreme court of North Carolina.

The complainants, citizens and residents of the State of New York, are the owners and holders of forty-eight of these Stanly County bonds of the denomination of $1,000 each, and of thirty-three of the same bonds of $500 each. All of these were purchased in open market for value, before maturity. Upon these there are due and unpaid coupons for one year on said bonds, the year for which the tax was levied and collected.

The prayer of the bill is, that the county commissioners and the treasurer of the county be enjoined and restrained from using this money, proceeds of the tax so levied and collected, for any other purpose than the payment of the coupons on said $100,000 of bonds subscribed as aforesaid, including therein coupons held by complainants, and that they be instructed and directed to pay from said proceeds of said tax, the said coupons on said bonds.

Before any examination into the merits of this case can be made, two preliminary questions must be met and decided.

The defendants deny the jurisdiction of this court, sitting as a court of equity, because, as they allege, the complainants have a plain, adequate and complete remedy at law.

They also claim that this court will not go into an investi-
51 gation of the validity of these bonds and the coupons thereof, because this is a matter already concluded with respect to the identical bonds by the supreme court of North Carolina, and is not only *res judicata*, but is the construction of a court of last resort of a State, of its own constitution and statutes.

Have the complainants a plain, adequate and complete remedy at law?

The question is not, is there a remedy at law.

"Equity jurisdiction may be invoked, although there is a remedy at law, unless the remedy at law, both in respect to the final relief and the mode of obtaining it, is as efficient as the remedy in equity." (Kilborne *vs.* Sunderland, 130 U. S., 505.)

This objection being in the nature of a demurrer, these facts must be accepted as true. A special tax has been levied under the act of the General Assembly to pay these coupons, this tax has been collected in money and is now in the hands of the county treasurer, received by him for this purpose, as treasurer of the county, and so under the direction of the county commissioners. (Sections 766, 777 Code of North Carolina.) It may well be questioned if an action for money had and received will lie against the treasurer under these circumstances, for he received and holds the money subject to the control of the county commissioners. If such action be brought and it be discovered that all county funds in the hands of the treasurer had been expended by him under warrants from the county

commissioners, the mode authorized by law, it is by no means clear that a personal judgment or a judgment binding his bond could be obtained against him. If this be so, in order to obtain adequate relief, an injunction should be issued against any use of the proceeds of this tax, either against the treasurer, protecting him in disobedience of the warrant of the county commissioners directing other use of this money or against the commissioners themselves from attempting so to do. Such relief cannot be had at law. Such a remedy might perhaps be found in the practice under the code. But this will not affect the ancient and well-established jurisdiction of the court of equity. "The adequacy or inadequacy of a remedy at law for the protection of one entitled on any ground to invoke the powers of a Federal court, is not to be conclusively determined by the statutes of the particular State in which suit may be brought." (Smyth *vs.* Ames, 169 U. S., 516, 517.) The test is, has he remedy at law in this court. If he has not, then a court of equity has jurisdiction.

Besides this, the tax in question was levied upon the county pursuant to the provisions of the act of assembly. Having been
52 once levied and collected, no other tax for the same purpose could be again levied and collected. If, therefore, the county commissioners, in the exercise of rights claimed by them in their view of the invalidity of these bonds, had appropriated and used for other purposes the proceeds of the tax levied and collected for the coupons of the bonds, the holders of these coupons, if perchance they establish the validity of their bonds, will be without remedy against the county. In this view of the case, the tax-payers of the county, having once furnished the money by paying the special levy, cannot be called upon to furnish it again. Therefore an injunction would be appropriate to prevent the use of this fund. Necessarily all this proceeds upon the idea that the fund created for the payment of these coupons is impressed with a trust. Assume now for the sake of the argument (and at this stage of the case, considering this objection, which is, in effect, a demurrer, we must assume it) that the act under which the bonds were issued is valid. The act authorized the subscription to be made in bonds with coupons, also the levy of the tax to pay the coupons. All these, the authority to subscribe, the mode of subscription, the tax to meet the terms of the subscription, the collection of the tax and holding its proceeds, are the several steps by which the legislature secures the performance of the powers given by it to the county. If the collection and application of the proceeds of this tax to the interest of the bonds so authorized be not secured, the intent of the legislature will not be completed. This being the case, these funds are dedicated to a special object and cannot be applied to any other. In other words they are impressed with a trust and that trust can well be enforced in a court of equity. (Willis *vs.* Board of Commissioners, 86 Fed. Rep., 872.)

This being so there is not a plain, adequate and complete remedy at law, such as will prevent the exercise of the established jurisdiction in equity over a trust. See Lamon *vs.* McKee, 159 U. S., 317.

The supreme court of North Carolina in Commissioners of Stanly County *vs.* Snuggs, 121 No. Ca., 394, held that the bonds issued by Stanly county in aid of this railroad were void. The ground of the decision was that it did not appear affirmatively upon the journals of the two houses that the yeas and nays on the second and third readings of the bill had been entered upon the journal as required by the constitution. And further that it is competent to introduce in evidence the journal of either house of the legislature in
53 order to show that an act duly enrolled and ratified was not passed in compliance with the constitutional requirement.

The parties to the suit in which this decision was rendered were the county commissioners on the one hand and their treasurer on the other. No bondholder was a party nor were the interests of the bondholders represented. It is clear, therefore, that the case cannot operate as *res judic-ta* against the bondholders.

Indeed, when we examine this case it is difficult to avoid the conclusion that it was practically *ex parte*. The treasurer, under the Code of North Carolina, above quoted, is under the control of the county commissioners. He cannot expend any money in the county treasury, except under their warrant or with their authority. To this he is bound by his bond. When, therefore, they proceed against him seeking an injunction from the court, the proceeding in fact is by the principal seeking to prevent the agent from doing an act which he cannot do without their permission.

The parties, plaintiff and defendant to this suit, were practically one.

But is not this case the determination of the court of last resort in North Carolina upon the constitution and laws of that State, which would be conclusive in this court? This brings up the merits of the case at bar.

The general rule undoubtedly is as stated in Leiper *vs.* Texas, 139 U. S., 467. "It must be regarded as settled that whether statutes of a legislature of a State have been duly enacted in accordance with the requirements of the constitution of such State, is not a Federal question, and the decisions of State courts as to what are the laws of the State are binding upon the courts of the United States."

But this rule has its modification when applied to the validity of municipal bonds. This is stated thus: "As against a party who became the owner of municipal bonds before the decision of the State court invalidating them was rendered, we do not consider ourselves bound by such decision, unless we regard it as intrinsically sound. (Enfield *vs.* Jordan, 119 U. S., 680. Bolles *vs.* Brenfield, 120 U. S., 759, quoted and affirmed in Barum *vs.* Okolona, 148 U. S., 396.) And the same doctrine in announced and followed in Folsom *vs.* Ninety Six, 159 U. S., 611. See also Burgess *vs.* Seligman, 104 U. S., 20.

There is also another modification of the rule first stated. That when at the date of the issue of municipal bonds the decisions of the court of last resort sustained their validity, *bona fide* purchasers for value are not affected by subsequent decisions declaring them invalid. Anderson *vs.* Santa Anna, 116 U. S., 366.

54 What then was the law of North Carolina as declared — its court of last resort at the date of the issue of these bonds? The bonds were issued in 1890, and then sold on the market. The decision in Commissioners *vs.* Snuggs, was in 1897.

The precise question is this. The constitution of North Carolina provides that no law shall be passed to raise money on the credit of the State or to pledge the faith of the State, directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow counties, cities or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly, and passed three several readings, which readings shall have been on three different days, and agreed to by each house, respectively, and unless the yeas and nays on the second and third reading- of the bill shall have been entered on the journal. Constitution of North Carolina, article 2, section 14.

Is it encumbent on the bondholder or is it competent for the county to show by the journals that no entry of the yeas and nays on the second and third reading- was made on such journal.

Or is the enrollment and ratification of the act and its signature by the presiding officers of the two houses conclusive proof as of record that all the requirements of the constitution were compl-ed with, so conclusive as to pre-lude further inquiry? It is admitted that in the case at bar there was no such entry on the journal.

A question somewhat similar to this came up in Broadnax *vs.* Groom, 64 No. Ca., 244.

The constitution of North Carolina, article 2, section 12, provides that the General Assembly shall not pass any private law unless it shall be made to appear thirty days' notice of application of such a law shall have been given under such direction and in such manner as shall be provided by law. In this case the objection was made to an act that the thirty days' notice had not been given. Pearson, Ch. J., delivering the opinion of the court, says:

"We do not think it necessary to enter into the question whether this is a public local act or a mere private act in regard to which thirty days' notice of the application must be given, for, taking it to be a mere private act, we are of the opinion that the ratification certified by the lieutenant governor and the speaker of the house, makes it a matter of record which cannot be impeached before the courts in a collateral way. A record, until reversed, importeth verity. * * * The courts must act on the maxim *omnia*
55 *presumantur*." It will be noticed that the constitution in this regard does not prescribe any fixed mode in which the notice must be shown.

In Scarborough *vs.* Robinson, 81 No. Co., 304, the question was discussed. In that case it appeared that an act of the legislature had gone through every stage required by the constitution, had been voted upon on its second and third readings by the yeas and nays and these had been entered upon the journal. It had been duly enrolled for ratification and the journals stated that it had been duly ratified. But upon examination of it in the office of the secretary of state it showed an absence of the signatures of the presiding officers

of the two houses. An effort was made *made* to declare it the law, notwithstanding this omission.

Ch. J. Smith, delivering the opinion of the court, clearly expresses his opinion that the certificate and signatures of the presiding officers make a record which cannot be assailed. He quotes with approval Pacific R. R. Co. *vs.* Governor, 23 Mo., 353, which lays down this doctrine and denies to the court the power to declare invalid an act which in its terms is not contrary to the constitution—on its face is regular, where resort must be had to something behind the law itself in order to ascertain whether the legislature, in making the law, was governed by the rules prescribed for its action by the constitution. He also quotes with approval Panghorn *vs.* Young, 32 N.J., Law 29, followed in Nevada *vs.* Swift, 10 Nevada, 176, in which the doctrine is broadly stated that a bill attested by the presiding officers is conclusive proof of the enactment, and contents of a statute and cannot be contradicted by the legislative journals or in any other way. But this expression of opinion by this learned chief justice is declared by himself to be *obiter dictum*. He expressly limits the decision of the court to the absolute necessity of the signatures of the presiding officers to the enrolled act, because it was one of the essential requirements of the constitution. Such were the decisions of the supreme court of North Carolina before and at the date of the issue of these bonds. Subsequent decisions of this same court throw some light upon those quoted. In Carr *vs.* Coke, 116 No. Ca., 223, among the published acts appeared one of which the journals did not show that it had the three readings in each house as required by the constitution (article 2, section 23). It had, however, been duly ratified. The court held, with a strong dissent of two of its members, that when it appears that a bill has bee- duly signed by the presiding officers of the two houses of the General Assembly, declaring it to have been read three times in each house, the
56 courts cannot go behind such ratification to inquire whether it was fraudulently or erroneously enrolled before it had been passed after the requisite readings by each house, although the journals do not show that it was so passed. Faircloth, Ch. J., wrote the opinion of the court and rests on the doctrine announced in Broadnax *vs.* Groom, *supra*.

Here it will also be noticed that the constitution does not prescribe that the fact of the three readings must be entered upon the journals. The next is the case of The Commissioners *vs.* Snuggs, above quoted, declaring these bonds invalid after admitting the evidence of the journals.

The only decision upon the validity of municipal bonds is this last. So when these bonds were issued, the purchaser, upon making the inquiry, as he was bound to do, did not have direct authority for believing the act constitutional. He was governed by reasoning from analogy in similar cases. This court, therefore, has the right to form its own judgment upon the matter.

The general principle laid down by Pearson, Ch. J., in Broadnax *vs.* Groom, and approved by his learned successors, Chief Justices Smith and Faircloth, has met the approval of and has been ably sus-

tained in many States of this Union. In others it has been disputed and the contrary conclusion reached. The conflicting cases are quoted in Marshall, Field & Co. *vs.* Clark, 143 U. S., 661, and many of them commented on in an able opinion in State *vs.* Jones, Lawyers' Reports, Ann., Book 23, (1894), page 340.

The question is one of power. Had the county of Stanly under the act of 1870–'71, power to make this subscription in bonds and to levy the tax consequent thereon? Or perhaps the question can be put in this way: Was the act passed by the General Assembly in the lawful exercise of the power given to it by the constitution of the State?

It goes without saying that the legislatures of the severrl States of the Union have full legislative power, limited only by express provisions of the Constitution. And one of the legislative powers is the levying of a tax for such purposes as the legislature deems public in their character, among which all the States recognize subscriptions in aid of railroads.

The people of North Carolina in their constitution limited this power of taxation in the legislature and declared that when it is exercised in incurring any debt and levying a tax therefor, certain indispensable prerequisites must exist.

57 Other acts must be read three times in each house. (Article 2, section 23.) An act for this purpose cannot become a law unless it has been read three several times in each house, has passed three several readings, and it has been so read on three different days, and agreed to by each house. And unless the yeas and nays on the second and third reading- of the bill shall have been entered on the journal. Here the constitution distinctly and expressly states the mode and the only mode in which this power can be exercised. The entry of the yeas and nays on the last two readings must appear on the journal. Unless each and every of the requirements of the constitution are fulfilled, it is no law. The constitution itself makes the journals evidence—because the entry on the journal must be made to appear. It is a familiar rule of law that where a limited authority is conferred, it must be shown that the exercise of the authority was within the limitation. Especially is this the case when the constitution expressly, in a separate section, declares when, and only when, and how and only how, this power can be exercised. The party claiming under the exercise of the power must establish it beyond question.

There is some force in the peculiar language of the constitution. It does not say that in passing such an act there must be three readings &c. It says no such law can be passed unless certain prescribed requisites have actually been performed, and unless the yeas and nays shall have been entered on the journal. Thus making these prerequisites a condition precedent. It is well expressed in the opinion of the court in The Commissioners *vs.* Snuggs. "The certificate of the presiding officers will be taken as conclusive of the several readings in ordinary legislation, even if it could be made to appear that the journals were silent in reference thereto, because in ordinary legislation the directions of the constitution are not a con-

dition precedent to the validity of the act. But in that class of legislation the purpose of which is to legislate under section 14 of article 2 of the constitution, a literal compliance with the language of the section, is a condition precedent, and one which must be performed in its entirety before the bill can ever become a law." The act in question passed the legislature, no doubt, and the certificate of its presiding officers that it received three readings in each house no doubt is conclusive, and in its general result may be a valid act. But when it is set up as authority for levying this tax to meet this subscription, it must affirmatively appear that the condition precedent was complied with, and that the yeas and nays were recorded in the journal. This is not a question of the repudiation of a debt—not an effort to escape from an obligation, because certain
58 technical matters of detail in the exercise of a power were neglected or were not made to appear. The question is, does the obligation exist at all? Did the legislature in the exercise of a restricted authority, keep within the limits of the restriction?

The bonds, however, upon their face declare that they were issued under the authority of sections 1996, 1997, 1998, 1999 and 2000, of the Code of North Carolina. And in construing these sections, for reasons already given, this court can exercise its own judgment. "All the sections of the code were enacted by the General Assembly, having passed three several readings on three different days in either house, the yeas and nays on the second and third readings having been entered on the journals of both houses respectively." Commissioners *vs.* Snuggs, 121 No. Ca., 401.

There can be no question that these sections were passed in strict compliance with the terms of the constitution.

Section 1996 is as follows: "The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." The other sections prescribe the mode in which such subscriptions shall be made, the vote of the county taken thereon, and the tax levied therefor. In this case there is no question as to the regularity of all the details of subscription, vote and tax. The sole question is as to the construction of section 1996. This section gives authority to the county commissioners to subscribe to the stock in any railroad company on two conditions, first, when necessary to aid in its completion, and second, when the citizens of the county have an interest in it.

This road runs into Stanly county, one of its termini is in that county, the other terminus connects it with the trunk line of the North Carolina railroad at Salisbury, and gives communication with all parts of the country. To aid in building a railroad is a public purpose, and for the general welfare of the ordinary municipal corporations, such as counties, cities and towns through which the road is to pass, and so is a corporate purpose. (Livingston Co. *vs.* Darlington, 101 U. S., 407. Bolles *vs.* Brimfield, 120 U. S., 759. Brown *vs.* Hartford Commissioners, 100 No. Ca., 92.)

The public policy of all the States of the Union, notably of North

Carolina, recognize- that railroads are of great public concern, and a great public benefit. None of these States have shown this,
59 in a more marked degree than the State of North Carolina which has expended vast sums in opening up the magnificent system of these public highways, developing every section of the State. It is evident, therefore, that in this Yadkin railroad the citizens of the county of Stanly had an interest of a valuable and important character.

What is the meaning of the words "when necessary to aid in the completion of any railroad." At the date of the passage of this section, the laying of the track of this road had not been begun.

It will be noticed that there is no time limit in this section. The words are, "to any railroad company." There is no such qualification as that made in section 4, article 6, of the constitution, relating to a similar subject. "And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon."

This constitution was adopted in the same year in which the act now incorporated as section 1996 of the code was passed. The use of different language is marked and significant. The one limits the power of the legislature to the completion of a railroad unfinished at the adoption of the constitution. The other omits such limitation and says "any railroad." Without question the act means any railroad whatsoever and at any time thereafter in which the people of the county have an interest. Again the constitution limits the power of the legislature to railroads, in which the State has a direct pecuniary interest, that is to say, to which the State has granted aid before. The act, with the constitution before it, omits these words "direct and pecuniary," evidently intending a valuable interest, direct or incidental. What then is the meaning of the words "in the completion of?" This word must be used in its ordinary colloquial sense. In its narrowest signification the meaning of this word is to carry out something already begun, to fill out something already outlined. In this sense the act will mean come to the assistance of a railroad begun or contemplated and aid in accomplishing its end, completing it to its terminus. The clear purpose of the section was to prevent a county from undertaking of itself to construct a railroad, or to subsidize one already completed, and to limit it to aid others who have undertaken the enterprise and to aid them in its completion. In the term, the com-
60 pletion of a railroad, is involved the selection of the termini, the survey and location of the route, the securing of the right of way, the construction of the road-bed and the laying and ironing the track. Any aid given in any of these stages is aid in the completion of a railway. In this view of the case the *the* county commissioners were authorized by these sections of the code to make the subscrip-

tion, and their action having been sustained by the popular vote to issue the bonds and to levy the tax.

It is ordered that the injunction issue as prayed for in the bill.

It is further ordered, that Kerr Craige, Esqr., be appointed receiver in this behalf, and that the defendants place in his hands and under his control the monies in the treasury of Stanly county, proceeds of the tax levied for the purpose of paying the coupons on the bonds issued in subscription to the capital stock of the Yadkin railroad, and that he hold the same subject to the further order of this court.

It is also ordered that the said receiver enter into bond, with surety to be approved by a judge of this court, in the penal sum of ten thousand dollars, with the condition for the faithful performance of his trust as such receiver.

CHARLES H. SIMONTON,
12 August, 1898. *Circuit Judge.*

Endorsement: Filed in this office, Aug. 13, 1898, as of June term, 1898. H. C. Cowles, clerk.

Bond of Kerr Craige, Receiver.

UNITED STATES OF AMERICA,
Western District of North Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. N. COLER COMPANY
vs.
THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, County Treasurer.

Know all men by these presents that we, Kerr Craige, and Thomas C. Linn, Lee S. Overman, Theo. F. Kluttz and Samuel H. Wiley, are held and firmly bound unto the Board of Commissioners of Stanly County, and I. W. Snuggs, the defendants above named, in the
61 penal sum of ten thousand dollars, lawful money of the United States, to which payment, well and truly to be made, we bind ourselves jointly and severally, our executors and administrators, firmly by these presents.

Sealed the eighteenth day of August, 1898.

The condition of this obligation is such, that whereas, the above-bounden Kerr Craige, is appointed receiver in the above-entitled cause, to receive from the said defendants the monies in the treasury of Stanly county, proceeds of the tax levied for the purpose of paying the coupons on the bonds, issued by the county of Stanly, in subscription to the capital stock of the Yadkin railroad, and to hold the same subject to the further order of this court.

Now, therefore, if the said Kerr Craige, receiver, as aforesaid, shall faithfully perform the trust imposed upon him, and shall

obey all orders of the court touching said trust, then this obligation is to be null and void; otherwise to remain in full force and effect.

KERR CRAIGE. [SEAL.]
THEODORE F. KLUTTZ. [SEAL.]
LEE S. OVERMANN. [SEAL.]
THOMAS C. LINN. [SEAL.]
SAMUEL H. WILEY. [SEAL.]

Witness:

O. D. DAVIS, [SEAL.]
Notary Public.

T. C. Linn makes oath that he is worth five thousand dollars over and above his indebtedness, and all exemptions allowed by law.

THOMAS C. LINN.
[SEAL.] O. D. DAVIS,
Notary Public.

Theo. F. Kluttz makes oath that he is worth ten thousand dollars over and above his indebtedness and all exemptions allowed by law.

THEODORE F. KLUTTZ.
[SEAL.] O. D. DAVIS, *Notary Public.*

Lee S. Overman makes oath that he is worth five thousand dollars over and above his indebtedness and all exemptions allowed by law.

LEE S. OVERMAN.
[SEAL.] O. D. DAVIS,
Notary Public.

62 Samuel H. Wiley makes oath that he is worth five thousand dollars over and above his indebtedness and all exemptions allowed by law.

SAMUEL A. WILEY.
[SEAL.] O. D. DAVIS,
Notary Public.

Approved—
CHAS. H. SIMONTON,
Circuit Judge.

27th Aug., 1898.

Endorsement: Filed in this office Aug. 27, 1898. H. C. Cowles, clerk.

And on August 29th, 1898, in pursuance to the foregoing decree and order of the court, a writ of injunction is issued out of our said court, with certified copies for respondents, as follows, to wit:

Writ of Injunction.

UNITED STATES OF AMERICA,
Western District of North Carolina.

United States Circuit Court, Fourth Circuit, at Charlotte, N. C.

The President of the United States to the marshall of said district, Greeting:

You are hereby commanded to make known to the Board of County Commissioners of Stanly County, N. C., and I. W. Snuggs, treasurer of said county, that W. N. Coler *et al.*, under the name and style of W. N. Coler & Co. bankers, have filed their bill in our said circuit court of equity for said district and circuit against them, and each of them, and it was thereupon ordered by the said circuit court of the United States that an injunction be issued against the Board of County Commissioners of Stanly County, and the said I. W. Snuggs, treasurer of said county, enjoining them, or any of them, their agents or attorneys, from making away with, disposing of, or in any manner interfering with the monies in the treasury of said county, the proceeds of the tax levied and collected for the purpose of paying the coupons on the bonds issued in subscription to the capital stock of the Yadkin Railroad Company, and in the said treas-
63 ury and hands of said I. W. Snuggs, treasurer aforesaid; and that they, and each of them, are hereby enjoined and restrained from making away with, disposing of, or in any manner interfering with the said monies, proceeds of said tax levied and collected for the purpose aforesaid; and further are ordered to place the same in the hands and under the control of Kerr Craige, Esq. who is appointed receiver in this behalf by this court, and the said receiver will hold the same subject to the further order of this court. Herein fail not, and make due return hereof

Seal of the Court.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Charlotte, N. C., this the 29th day of August, 1898, and in the 123rd year of the Independence of the United States.

H. C. COWLES,
Clerk of said Court.

And on September the 20th, 1898, the said writ of injunction is returned by the marshal with following endorsement, to wit:

Marshal's Return to Writ of Injunction.

"Received Sept. 2d, 1898. Executed Sept. 6th, 1898, by reading and delivering a copy *to* the within, to James P. Nash, George F. Dunlap, J. C. Parker, county commissioners, and to I. W. Snuggs, treasurer.

J. M. MILLIKAN,
U. S. Marshal,
By B. L. COX, *D. M.*"

Endorsement: Filed in this office Sep. 20, 1898. H. C. Cowles, clerk.

Petition on Appeal.

Circuit Court of the United States, Fourth Circuit, Western District of North Carolina. In Equity.

THE BOARD OF COMMISSIONERS OF STANLY County and I. W. Snuggs, County Treasurer, Appellants,
against
W. N. COLER AND COMPANY, Appellees.
} Petition on Appeal.

The above-named, The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer, defendants in the original bill, conceiving themselves aggrieved by the decree made
64 and entered on the 12th day of August, 1898, in the above-entitled cause, do hereby appeal from said order and decree to the United States circuit court of appeals for the fourth circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the fourth circuit.

SCHENCK & SCHENCK,
A. C. AVERY,
J. E. SHEPHERD,
Attorneys for Appellants.

Dated August 29th, 1898.

The foregoing claim of appeal is allowed.

CHARLES H. SIMONTON,
Circuit Judge.

Dated the 31 day of August, 1898.

Endorsement: Filed in this office Sep. 12, 1898. H. C. Cowles, clerk.

Assignment of Errors.

Circuit *County* of the United States, Fourth Circuit, Western District of North Carolina. In Equity.

THE BOARD OF COMMISSIONERS OF STANLY County and I. W. Snuggs, County Treasurer, Appellants,
vs.
W. N. COLER AND COMPANY, Appellees.
} Assignments of Errors.

And now, on the 31st day of August, 1898, come the said The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer, defendants in the original bill, by Schecnk and Schecnk,

A. C. Avery and J. E. Shepherd, their solicitors, and say that the decree in said cause is erroneous and against the just rights of the said defendants for the following reasons:

First. Because the court was in error in granting the decree and order of injunction, as appears in the record.

Second. Because the court was in error in refusing to hold that the bonds issued by the county of Stanly and set out in the pleadings, were invalid and void.

65 Third. Because the court was in error in holding that, the commissioners of the county of Stanly were authorized to make the subscription to the Yadkin Railroad Company of $100,000, as set out in the pleadings, under the provisions of sections 1996, 1997, 1998, 1999 and 2000 of the Code of North Carolina, and to issue the said bonds.

Fourth. Because the court was in error in holding that the language of section 1986 of the Code of North Carolina, authorized the said commissioners of Stanly county to make the said subscription and to issue the said bonds, when it appeared to said court that at the time said subscription was made and said bonds issued the construction of said Yadkin railroad had not been begun.

Fifth. Because the court was in error in holding that the said commissioners of Stanly county had the authority to make said subscription and to issue said bonds, when it did not appear to said court that said subscription was necessary to aid in the completion of said Yadkin railroad.

Sixth. Because the court was in error in holding that under said section 1996 of the Code of North Carolina the words "necessary to aid in the completion of any railroad in which the citizens of the county may have an interest," applied to a railroad which had merely been incorporated, but the construction of which had not been begun.

Seventh. Because the court was in error in holding that the defendant, I. W. Snuggs, treasurer of Stanly county, held the money in his hands, being the special tax collected as set out in the pleadings, in trust for the complainants, W. N. Coler and Company, and other holders of said bonds and coupons, and, therefore, that this court had equitable jurisdiction in the premises.

Eighth. Because the court was in error in assuming authority to enjoin the disbursement by the defendant (appellant) I. W. Snuggs, county treasurer, of the funds in his hands as set out in the pleadings; the court by its decree restraining and preventing the enforcement of a judgment of a State court rendered in obedience to the decision of its highest appellate court, and neither the Constitution of the United States, nor any statute enacted in pur-uance of it, confers jurisdiction or authority upon a circuit court of the United States to make such a decree.

Ninth. Because the court was in error in misconstruing the meaning of sections 1996 to 2000, both inclusive, of the Code of North
66 Carolina, and in failing to follow the construction given to said sections by the supreme court of the State of North Carolina.

Tenth. Because the court was in error in refusing to follow the construction given by the supreme court of North Carolina (in Galloway *vs.* Chatham R. R. Co., 63 N. C., Rep., 147, 155, 156) to art. V. sec. 4, of the constitution of North Carolina, the language of which is substantially the same and synonymous with that of the said section of the code construed by the court, the said construction of said section of the constitution having been given by said supreme court at its January term, in the year 1869, and before the bonds, which are the subject of the controversy, were issued or received by the plaintiff.

Eleventh. Because the court was in error in refusing to hold that the circuit court of the United States was expressly prohibited by section 720 of the Revised Statutes of the United States from enjoining the enforcement of the judgment of the State court, rendered in the case of Commissioners of Stanly County *vs.* I. W. Snuggs, treasurer, as set out in the pleadings in this cause.

Wherefore, said defendants, The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer, pray that the said decree be reversed, and that the said court may be directed to enter a decree vacating and dissolving the said order of injunction.

SCHENCK & SCHENCK,
A. C. AVERY,
JAS. E. SHEPERD,
Solicitors for the Defendants, Appellants.

Endorsement: Filed in this office Sep. 12, 1898. H. C. Cowles, clerk.

Bond on Appeal.

Know all men by these presents, that we, The Board of Commissioners of Stanly County, and I. W. Snuggs, county treasurer, as principals, and Geo. T. Dunlap, Thos. S. Parker, J. C. Parker and W. T. Huckabee, as sureties, are held and firmly bound unto W. N. Coler and Company in the just and full sum of two hundred and fifty dollars to be paid to the said W. N. Coler and Company, their attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, ex-
67 ecutors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5 day of Sept., 1898.

Whereas, lately at a circuit court of the United States for the western district of North Carolina, at Charlotte, in a suit depending in said court between W. N. Coler and Company, complainants, against The Board of Commissioners of Stanly County, and I. W. Snuggs, county treasury, defendants, a decree was rendered against the said The Board of Commissioners of Stanly County, and I. W. Snuggs, county treasury, defendants, and in favor of the said W. N. Coler and Company, complainants, and the said The Board of Commissioners of Stanly County, and I. W. Snuggs, county treasurer, having obtained an appeal, and filed — thereof in the clerk's office of the said circuit court to reverse the decree in the aforesaid suit, and

a citation directed to the said W. N. Coler and Company citing and admonishing them to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond, Virginia, on the first Monday in November, 1898, being the 7th day of November, 1898.

Now the condition of the above obligation is such that if the said The Board of Commissioners of Stanly County, and I. W. Snuggs, county treasurer, shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make their plea and defence good, then the above obligation to be void; otherwise to remain in full force and virtue.

THE BOARD OF COMMISSIONERS OF
STANLY COUNTY, [SEAL.]
By J. E. SHEPHERD, *Att'y.* [SEAL.]
D. SCHENCH, JR.
I. W. SNUGGS, *County Treasurer,* [SEAL.]
By J. E. SHEPHERD, *Att'y.* [SEAL.]
GEO. T. DUNLAP. [SEAL.]
THOS. S. PARKER. [SEAL.]
W. T. HUCKABEE. [SEAL.]
JULIUS C. PARKER. [SEAL.]

Approved by—

——— ———,
Circuit Judge.

68 NORTH CAROLINA, }
Stanly County. }

Personally appeared before me this day Geo. T. Dunlap, Thos. S. Parker, J. C. Parker and W. T. Huckabee, residents and freeholders of said county and State, who made oath that they are each worth the sum of two hundred and fifty dollars over and above all their indebtedness and homestead exemptions allowed by law.

[SEAL.] S. H. MILTON,
Clerk Superior Court.

Sept. 5, 1898.

Approved:
CHAS. H. SIMONTON,
Circuit Judge.

8 Sept. 1898.

Endorsement: Filed in this office Sep. 12, 1898. H. C. Cowles, clerk.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. N. Coler and Company, appellees, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fourth circuit, to be

holden at Richmond on the twenty-ninth day of September, next, pursuant to an appeal from a decree of the circuit court of the United States for the western district of North Carolina, fourth circuit, at Charlotte, in your favor, passed in a cause in said court, wherein W. N. Coler and Company are complainants, and The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer, are defendants in the original bill, to show cause if any there be, why the decree rendered against the said defendants in the original bill, appellants, in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court this 31 day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. H. SIMONTON,
Judge U. S. Circuit Court, Fourth Circuit,
Western District of North Carolina.

69 Endorsement: Service accepted this 9 day of Sept. 1898. Chas. Price, sol's for appellees, W. N. Coler & Co. Filed in this office Sept. 12, 1898. H. C. Cowles, clerk.

Order Granting Time to Perfect Appeal.

Circuit Court of the United States, Fourth Circuit, Western District of North Carolina. In Equity.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, County Treasurer, Appellants,
vs.
W. N. COLER AND COMPANY, Appellees.
} Order.

In the above-entitled cause, on motion of Shepherd and Busbee, solicitors for defendants, (appellants):

It is ordered that the defendants, The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer (appellants) have additional time of fifteen days viz: to September 26th, 1898, within which to perfect the appeal of said defendants (appellants) to the United States circuit court of appeals, sitting at Richmond, Virginia, from the order and decree entered in the above-entitled cause.

This 6th day of September, 1898.

CHAS. H. SIMONTON,
Circuit Judge.

Endorsement: Filed in this office Sep. 12, 1898. H. C. Cowles, clerk.

And on September the 20th, 1898, a supersedeas bond is filed in our said court, in the words and figures as follows:

70 *Supersedeas Bond.*

UNITED STATES OF AMERICA,
Western District of North Carolina.

In the United States Circuit Court, Western District of North Carolina.

W. N. COLER & Co., Complainants and Appellees,
vs.
THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, Treasurer of Stanly Co., Respondents and Appellants.

Know all men by these presents, that we, I. W. Snuggs, treasurer of Stanly county, and The Board of Commissioners of Stanly County, as principals, and W. A. Marks and J. S. Efird and G. R. McCain and C. F. Dry and J. M. Harward and T. S. Parker, as sureties, are held and firmly bound unto W. N. Coler and Company in the just and full sum of ten thousand dollars, lawful money of the United States, to be paid to the said W. N. Coler and Company, their executors, administrators, successors and assigns, to which payment, well and truly to be made, we bind ourselves, our executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this, the 9th day of September, A. D. 1898.

The condition of this bond is such, that, whereas, at a circuit court of the United States for the western district of North Carolina, at Charlotte, in a suit, depending in said court between W. N. Coler and Company, as complainants, and The Board of Commissioners of Stanly County, and I. W. Snuggs, county treasurer, defendants, a decree was rendered by his honor, Charles H. Simonton, against the said defendants and in favor of said complainants, the terms of which are fully set forth in the decree filed in this cause, and the said defendants having obtained an appeal from the said decree and filed a copy of the same with the clerk of the said court to reverse the said decree, and a citation directed to complainants, citing and admonishing them to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond, on the 29th Sept., 1898.

Now, therefore, the condition of the above obligation is such that if the said respondents, The Board of Commissioners of Stanly County, and I. W. Snuggs, treasurer, shall pay the amount directed to be paid by the decree in this cause, if affirmed, or of such amount as shall be directed to be paid by the decree of the court upon an affirmance of said decree; in short, shall pay such sums and
71 damages as shall be awarded to be paid by the appellate court finally in this cause, and upon the appellants' failure

to prosecute their appeal with effect; then the above obligation is to be void, otherwise to remain in full force and effect.

I. W. SNUGGS, *Treasurer.* [SEAL.]
THE BOARD OF COMMISSIONERS OF STANLY CO.,
By J. P. NASH, *Chairman.* [SEAL.]
GEO. T. DUNLAP. [SEAL.]
J. C. PARKER. [SEAL.]
$1,000. W. A. MARKS. [SEAL.]
$10,000. J. S. EFIRD. [SEAL.]
$1,000. G. R. McCAIN. [SEAL.]
$1,000. J. M. his x mark. HARWARD. [SEAL.]
$1,000. C. F. his x mark. DRY. [SEAL.]
$1,000. T. S. PARKER. [SEAL.]

STANLY COUNTY:

Personally appeared before me W. A. Marks and J. S. Efird and G. R. McCain and J. M. Hardward and C. F. Dry rnd T. S. Parker, and who, being duly sworn, each for himself, says that he is worth the amount set opposite their names, respectively, over and above all liabilities and homestead and personal property exemptions allowed by law.

W. A. MARKS.
J. S. EFIRD.
G. R. McCAIN.
J. M. his x mark. HARWARD.
C. F. his x mark. DRY.
T. S. PARKER.

Sworn and subscribed before me by each of the said sureties for himself, on this the 10th day of September, 1898.

[Seal of Superior Court.]

S. H. MILTON,
Clerk Superior Court.

72 I hereby certify that the above bond is good and ample, this the 10th day of Sept. 1898.

S. H. MILTON,
Clerk Superior Court.

Approved—
CHAS. H. SIMONTON,
Circuit Judge.
15th Sept. '98.

Endorsement: Filed in this office, Sept. 20, 1898. H. C. Cowles, clerk.

And on September the 23rd, 1898, an order extending the time to prepare record for appeal in this cause, is filed in the words and figures as follows, to wit:

Order Extending Time Fifteen Day- to Prepare Record.

THE UNITED STATES OF AMERICA,
Western District of North Carolina, Fourth Circuit.

COLER & CO.
vs.
COUNTY COMMISSIONERS OF STANLY COUNTY and Snuggs, Treasurer. } In Equity.

Ordered that the defendants, appellants, have fifteen days extention within which to prepare record for appeal.

CHARLES H. SIMONTON,
Circuit Judge.

20th Sept. 1898.

Endorsement: Filed in this office Set. 23, 1898. H. C. Cowles, clerk.

And on October the 8th 1898, the following letter from his honor, Charles H. Simonton, circuit judge, is received and filed, and by request of counsel for appellants is incorporated in the record, to wit:

73 *Letter from His Honor Charles H. Simonton, Circuit Judge.*

The Circuit Court of the United States, Fourth Circuit.

CHARLESTON, S. C., *6th October*, 1898.

B. F. Long, Esq., Statesville, N. C.

MY DEAR SIR: Yours of the 5th just received. Mr. Clarkson, of Charlotte, said to me about ten minutes before your letter came that Mr. Price had requested him to say to me that the order of which you speak would come to me today or tomorrow. As soon as it comes I will send it at once to the clerk. I would not wait, however, beyond this week.

Yours very truly, CHARLES H. SIMONTON.

Endorsement: Filed in this office Oct. 8, 1898. H. C. Cowles, clerk.

And on the 8th day of October, 1898, a decree is filed in said cause in the words and figures as follows, to wit:

Final Decree.

United States Circuit Court, Western District of North Carolina.

W. N. COLER & COMPANY, Complainants, vs. THE BOARD OF COMMISSIONERS OF Stanly County and I. W. Snuggs, Treasurer.	In Equity.	Final Decree.

This cause coming on to be heard upon the bill, answers, replications, former orders, exhibits and other evidence in the cause, and being debated by counsel, the court doth declare that the bonds issued by the county of Stanly in aid of the building of the Yadkin railroad, mentioned in the bill, are valid obligations of the county of Stanly, and were purchased by the complainants for value, and that they are the lawful holders of the same. The court doth further declare that the respondent, I. W. Snuggs, is the lawful trustee of the said bondholders, and holds the sum of six thousand
74 dollars as such trustee, under and by virtue of the law and orders of the Board of Commissioners of Stanly County, for the benefit of the said bondholders, and for the sole purpose of paying off and discharging the interest due on the said bonds as set out in the bill. The court doth further declare that the said trustee has failed and refused to pay over the said sum to the holders of the coupons, as set out in the bill.

And now, it is, therefore, ordered and decreed that Kerr Craige be, and is appointed, a receiver for said sum of six thousand dollars; and that the said I. W. Snuggs, treasurer, pay over to him forthwith the said sum, and that the said Board of Commissioners of Stanly County are enjoined from in any manner interfering with the execution and performance of this decree.

It is further ordered and decreed that the said receiver, Kerr Craige, enter into bond in the sum of ten thousand dollars, to be approved by this court, for the faithful performance of the duties of his receivership.

It is further ordered and decreed that the said receiver hold the said sum of six thousand dollars until the further order of the court.

CHARLES H. SIMONTON,
Circuit Judge.

Endorsement: Filed in this office Oct. 8, 1898. H. C. Cowles, clerk.

Order to Transmit Record.

And, thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United

States circuit court of appeals for the fourth circuit; and the same is transmitted accordingly.

[Seal of the Court.]

Teste: H. C. COWLES, *Clerk.*

75 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Western District of North Carolina.

Circuit Court, Fourth Circuit, at Charlotte, N. C.

I, H. C. Cowles, clerk of the circuit court of the United States for the western district of North Carolina, do certify that the foregoing is a true, full, and complete transcript of the record and proceedings in the case of W. N. Coler, W. N. Coler, Jr., Bird S. Coler, James W. Campbell and Francis W. Coler, bankers, under the name and style of W. N. Coler and Company, complainants, against The Board of Commissioners of Stanly County and I. W. Snuggs, treasurer of Stanly county, respondents, as fully as the same remain on file and of record in my office.

Seal of the Court. In testimony whereof I hereunto set my hand and affix the seal of said court at office in the city of Charlotte in said district, on this 8th day of October, A. D. 1898.

H. C. COWLES,
Clerk of said Court.

And on the 10th day of October, 1898, an order extending the time for filing the record in this cause is received and filed in the words and figures as follows, to wit:

COLER AND COMPANY
vs.
STANLY COUNTY.

It is ordered that *that* the appellants have an extension of five days for filing their record in the above case.

CHARLES H. SIMONTON,
Circuit Judge.

7th Oct. 1898.

Endorsement: Filed in this office Oct. 10th, 1898. H. C. Cowles, clerk.

A true copy.
Test:

[Seal of the Court.]

H. C. COWLES, *Clerk.*

76 *Proceedings in the United States Circuit Court of Appeals for the Fourth Circuit.*

BOARD OF COMMISSIONERS OF STANLY County, N. C., *et al.*, Appellants, *vs.* W. N. COLER AND COMPANY, Appellees.	No. 290. Appeal from the Circuit Court of the United States for the Western District of North Carolina, Charlotte.

Oct. 10, 1898.—Transcript of record filed and cause docketed.
Same day. —Appearance of D. Schenk, Jr., and A. C. Avery for the appellants, and of Charles Price for the appellees, entered.
Nov. 14, 1898.—(November term, 1898.) Cause is continued.
Same day. —Twenty copies of the printed record *is* filed.

Stipulation as to Filing Briefs.

Filed Nov. 19, 1898.

COLER & CO. *vs.* COM'RS STANLY CO.

77 In the above-entitled suit, depending in the circuit court of appeals, in Richmond, Va., an appeal by respondents, it is agreed that the appellant shall have until Jan'y 1st, 1898, to file their briefs, in the office of the clerk of the court, and also printed record in the same.

CHAS. PRICE.
A. C. AVERY.

Nov. 17, 1898.

Feb. 17, 1899.—(February term, 1899.) Cause came on to be heard, and is argued by counsel, and submitted.
Aug. 11, 1899.—(May term, 1899.) The court announced and filed its opinion, which is as follows, to wit:

Opinion.

Filed Aug. 11, 1899.

78 United States Circuit Court of Appeals, Fourth Circuit.

THE BOARD OF COMMISSIONERS OF Stanly County, N. C., and I. W. Snuggs, County Treasurer, Appellants,
vs.
W. N. COLER & Co., Appellees.

No. 290. Appeal from the Circuit Court of the United States for the Western District of North Carolina, at Charlotte.

(Argued Feb. 17, 1899; decided Aug. 11, 1899.)

Before Goff, circuit judge, and Morris and Brawley, district judges.

A. C. Avery and David Schenck, Jr., (James E. Shepherd on brief), for appellants, and Charles Price, for appellees.

GOFF, *Circuit Judge*.

In 1870 the Yadkin Railroad Company was organized under the laws of the State of North Carolina. The corporation was created by an act of the assembly of that State, passed in the year 1870, and the charter was amended by an additional act passed in 1887. By virtue of the provisions of the amended act, Stanly, a county of North Carolina, was authorized to subscribe to the capital stock of said railroad. As provided by the legislation mentioned, the
79 question was submitted to a vote of the people of that county, and a subscription of $100,000 was ordered to said stock. The commissioners of the county, as authorized by such vote, prepared and issued bonds to the amount of one hundred thousand dollars, face value, and delivered them to the railroad company. These bonds, it is alleged in the bill, were placed on the market, and sold to *bona fide* purchasers for value. Each of the bonds on its face recites that it is one of a series issued by authority of an act of the assembly of North Carolina, ratified March 3, 1887, and of sections 1996, 1997, 1998 and 1999, of the Code of North Carolina, and authorized by a majority vote of the qualified voters of Stanly county, at an election regularly held for that purpose August 15, 1889, and issued to pay the subscription made by that county to the capital stock of the Yadkin Railroad Company. For four successive years after these bonds were issued a tax was regularly levied and collected for the purpose of paying the interest due on them, and the coupons representing the same were duly paid. The tax for the fifth year was also levied and collected. Then the commissioners of said county (certain tax-payers joining with them) instituted proceedings in the superior court of that county against the treasurer of the same, the object of which was to prevent the application of the money in the hands of that official, collected for the purpose of

paying the interest on said bonds, from being so applied, and also to have said bonds decreed invalid. The contention of the plaintiffs in that suit was that all of said bonds and coupons were void, and in support of such claim they alleged that neither of the acts of the assembly referred to—the act of 1870, under which the railroad company was organized, and the amendment thereof in 1887, under which the subscription was alleged to have been made—were passed in accordance with the requirements of article 2, section 14, of the constitution of North Carolina, in that neither of said acts, in fact, passed three separate readings in the house of representatives of said State on three different days; and, also, because that the yeas and nays were not taken in said house upon any reading of either of the acts, and for the reason that the yeas and nays, if taken at all, were not entered upon the journal of the house upon any of the readings of said bills.

80 The superior court of Stanly county, on the final hearing of such suit, decreed that the bonds were invalid, and made permanent an injunction by which said treasurer was inhibited from paying the interest then due on them. Subsequently, on appeal, the supreme court of North Carolina affirmed this ruling. Commissioners *et al. vs.* Snuggs, 121 N. C., 394; 28 S. E., 539.

The complainants below, appellees here, citizens and residents of the State of New York, and the owners and holders of a large number of such bonds, amounting to over $60,000 face value, which they had purchased in open market for value before maturity, being unable to collect the interest then due on the same, although a tax had been levied and collected for that purpose, instituted this suit in the circuit court of the United States for the western district of North Carolina against the board of commissioners of said county, and such treasurer, for the purpose of securing such payment and to prevent such treasurer from using the taxes so in his hands for any other purpose than that for which it was collected. Complainants below alleged that they so purchased the bonds in good faith and without any notice, expressed or implied, that they were otherwise than legal and valid; that the interest then due them and unpaid amounted to $3,870; that although the said commissioners had made such levy, and the same had been collected and was then in the hands of their treasurer, that he refused to pay such interest; that as said tax had been collected for the sole purpose of paying that interest, that the treasurer was, in fact, a trustee holding the same for the use of and in trust for the complainants; that said commissioners with others had instituted such suit in the superior court of Stanly county against their treasurer, but that complainants were not, nor was any other of the bondholders, made a party to such suit, and that, therefore, they were not bound by the decree entered therein; the prayer of the bill was for an accounting, for an injunction restraining the treasurer from paying out or using said fund so in his hands for any other purpose than the settlement of said interest coupons, and for further and general relief.

The court below, on reading the verified bill and exhibits
81 filed therewith, granted a restraining order in substance as prayed for, and set the application for an injunction and the

appointment of a receiver for hearing on a day mentioned. The defendants below answered said bill, denying the material allegations thereof, and claiming that the bonds so held by the complainants were not only voidable but absolutely void, for the reasons set forth in the bill that had been so filed in the superior court of Stanly county. The case was duly matured, and the court below, having considered the same, entered a decree sustaining the validity of the bonds, granting the injunction as prayed for, and appointing a receiver to take charge of the money so in the hands of said treasurer. From this decree the defendants below sued out this appeal.

The first question raised by the assignments of error is as to the validity or constitutionality of the legislation under which the bonds claimed by the appellees were issued. In the case of Commissioners of Stanly County *vs.* Snuggs, *supra*, the supreme court of North Carolina held that the bonds issued, under the legislation mentioned, were not the valid obligations of that county. The reasons given by that court, in support of said decision, were that the journals of the two houses of the General Assembly of that State, for the sessions thereof when chapter 236 of the acts of North Carolina, 1870–'71, and chapter 183 of the acts of that State for the year 1887 were passed, did not show affirmatively that the yeas and nays, on the second and third readings of the bills, had been entered upon said journals as required by the constitution of that State; and also that the Code of North Carolina, section 1996, authorizing county commissioners to subscribe stock to a railroad company, when necessary to aid in the completion of a railroad, did not include a railroad not begun to be built before the constitution of that State was adopted; and said supreme court also held that it was competent to introduce such journals for the purpose of showing that an act that had been duly enrolled, and approved by the presiding officers of said houses, was not, in fact, passed in the manner required by the constitution of that State, and that where the journals of the General Assembly show that a law, authorizing a county to issue railroad aid bonds, was not passed in the manner required by the constitution, the purchasers of the bonds
82 were chargeable with notice of such fact. The special provision of the constitution, so referred to, is as follows: Art. 2, sec. 14, "No law shall be passed to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill shall have been read three several times in each house of the General Assembly, and passed three several readings, which readings shall have been on three different days, and agreed to by each house, respectively, and unless the yeas and nays on the second and third reading of the bill shall have been entered on the journal." The people of the State of North Carolina, in their constitution, have expressly limited the power of their legislature relating to taxation, and pointed out the certain indispensable prerequisites that must not only exist as a fact, but also appear on the

journals of that legislature in a certain way. The constitution, thus in plain words, clearly indicates the way, and the only way, that the legislature can authorize the counties and the cities of the State to exercise the power of taxation. The entry of the yeas and nays, on the last two readings, must appear on the journal in order to comply with the requirements of the constitution, and unless they do so appear the bill has not become a law, and the evidence of its nullity is the journal provided by that constitution itself. On this point we quote from the opinion of the supreme court of North Carolina in Commissioners &c., *vs.* Snuggs, *supra*, as follows: "The entry showing who voted on the bill, and how they voted, must be made before the bill can ever become a law. The constitution does not allow the certificate of the presiding officers, or any other power, to cure such an omission. The certificate of these officers will be taken as conclusive of the several readings in ordinary legislation, even if it could be made to appear that the journals were silent in reference thereto, because, in ordinary legislation, the directions of the constitution are not a condition precedent to the validity of the act. But in that class of legislation, the purpose of which is to legislate under section 14 of article 2 of the constitution, a literal compliance with the language of that section is a condition precedent,
83 and one which must be performed in its entirety, before the bill can ever become a law. This point, however, has been so recently and so thoroughly discussed in the case of Bank *vs.* Commissioners, (119 N. C., 214), that it will be unprofitable to enter into another protracted discussion of it here. The authorities there cited are numerous and most of them directly in point." We also quote from the same opinion, the following: "The plaintiffs were allowed to produce copies of the house journal, certified by the secretary of state, to show that the above-mentioned acts were not passed by the General Assembly in accordance with the requirements of the constitution. The journal showed that the bill, which became chapter 236 of the Laws of 1870–'71, was introduced on the 31st of March, 1871, and referred to the committee on internal improvements; that it was reported favorably on the next day, and that on the 3rd of April, two days after its introduction, it passed its second and third readings, and that there was no entry of the yeas and nays on either of its readings. From that journal it appears that the bill, which was enacted into chapter 183 of the Laws of 1887, passed its second reading on February 26th, and that the yeas and nays were called on that reading and entered on the journal; that the bill passed its third reading on the 28th of February, but that the yeas and nays were not entered on the journal on that reading. We are of the opinion that it was competent to introduce the house journal as proof that the acts referred to were not passed according to the requirements of the constitution, and that they established that fact. That provision of the constitution (sec. 14, art. 2) is mandatory, as we have decided in Bank *vs.* Commissioners, 119 N. C., 214."

The complainants below insisted that, even if the court should hold that the acts referred to were not passed according to the requirements of the constitution of North Carolina, and that they were

therefore void, yet that still the bonds so issued were valid, nevertheless, for the reason that the commissioners of Stanly county had the power to issue the same under the authority of sections 1996, 1997, 1999 and 2000 of the code of that State; and that, as all the sections of said code were enacted by having been read three several times in each house of the General Assembly, and by having
84 passed three several readings on three different days in either house, and by having the ayes and nays on the second and third readings entered in the respective journals, the action so taken under the provisions of said sections was legal, and the bonds so issued were valid. The court below so held, and the remaining assignments of error relate thereto. Again do we quote and adopt the following portion of the court's opinion in the case of Commissioners, &c., *vs.* Snuggs: "But the defendant, for his protection, presents the view that, even if it be conceded that the acts above referred to were not passed according to the requirements of the Constitution, and for that reason might be held void by this court, yet the commissioners of the county had the right to submit the question of subscription, embracing the question of issue of bonds, and the levy of taxes to pay the same, principal and interest, to the voters of the county, and, upon approval by a majority of the qualified voters, to issue the bonds under sections 1996–2000 of the code. All the sections of the code were enacted by having been read three several times in each house of the General Assembly, having passed three several readings on three different days in either house, the yeas and nays in the second and third readings having been entered on the journals of the senate and house of representatives respectively.

"But did the sections above mentioned give additional and complete authority to order the election, issue the bonds and levy the taxes to pay them, principal and interest? Section 1996 is in these words: 'The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad, in which the citizens of the county may have an interest.' It will be necessary, in order that that section may be construed to give authority to the commissioners to issue the bonds, that the language should include a railroad not begun to be built before the constitution was adopted; that the word 'completion' should be construed 'building' or 'construction,' extending even to the building of a new road; for, in the case before us, it appears that the road had not begun to be built. We cannot see why the word 'completion' should be thought to have been used by the legislators in
85 any other sense than the one most usual and natural. Ordinarily the words 'to complete' are understood to mean 'to finish,' 'to fulfill,' and the word 'completion' to mean the 'finishing' or 'accomplishing in full' of something which has already been commenced; as, for instance, it is most frequent to hear the word 'completion' used in connection with the finishing years and months of the education of the young. * * * The object of the statute must have been to provide, by general act, means by which

the counties, without special legislation for each county by separate bills, might be enabled to complete unfinished railroads in which the counties had a pecuniary interest. At the time of the enactment of the statute of 1868–'69, and always since that time, any county of the State, duly observing the limitations of section 7 of article 7 of the constitution, and under an act passed according to the requirements of section 14, art. 2 of the constitution, could, and can, subscribe to the capital stock of a railroad company, whether unfinished or to be begun. The act of 1868–'69, however, considering the condition of affairs then existing—that is, that there were counties which had a pecuniary interest in the railroads that had been begun, but were unfinished—enabled such counties to make subscriptions of bonds to complete such unfinished roads at the earliest moment and with the least cost, by a general law passed according to section 14, art. 2 of the constitution. This reasoning leads us to the still further conclusion that, at the time when the act of 1868–'69 was brought forward in code, § 1996, and the four succeeding sections, it could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868, and that, therefore, the code sections could not apply to the present case, because the Yadkin railroad was not begun to be constructed until about 1889. We have given to the matter sembraced in this case a patient and thorough consideration. We are aware of the hardships and losses that may follow from our decision, and we are also aware of the probable complaints likely to be made by persons interested. But the constitutional requirement which we have discussed is clear in its meaning and its language, and it is also mandatory. We must obey it in our interpretation of its meaning. Investors in such securi-
86 ties, who may meet with losses, have no one to blame but themselves, for the journals of the General Assembly are open to public inspection, and the constitution of the State is a part of the public literature."

The questions raised by this appeal, and the legislation involved with the same, have been directly considered by the supreme court of the State of North Carolina, and the decisions of that court have been against the contention of the complainants below. Union Bank of Richmond *vs.* Commissioners of Town of Oxford, 119 N. C., 214, 25 S. E., 966; Board of Commissioners of Stanly County *et al. vs.* Snuggs, county treasurer, 121 N. C., 394, 28 S. E., 539; City of Charlotte *vs.* Shephard, 120 N. C., 411, 27 S. E., 109; Rodman *vs.* Town of Washington, 122 N. C., 39, 30 S. E., 118; Board of Commissioners of Wilkes County *vs.* Call *et al.*, 31 S. E., 481—in which case it was also held that sections 1996–2000, of the Code of North Carolina, "authorizing county commissioners to subscribe stock to a railroad company when necessary to aid in the completion of a railroad, do not include a railroad not commenced before the constitution of 1868 was adopted."

With these decisions of the supreme court of North Carolina we are in full accord. If we had reached a different conclusion, nevertheless, would not the determination of the court of last resort in

North Carolina, upon the questions involved herein, relating as they do to the constitution of that State, and to the validity of certain acts of its General Assembly and their construction, be respected by this court. Indeed, are we not bound by them?

The Supreme Court of the United States, in Leeper *vs.* Texas, 139 U. S., 462, 467, said: "It must be regarded as settled that whether statutes of a legislature of a State have been duly enacted, in accordance with the requirements of the constitution of such State, is not a Federal question, and the decision of State courts, as to what are the laws of the State, is binding upon the courts of the United States. South Ottawa *vs.* Perkins, 94 U. S., 260, 268; Post *vs.* Supervisors, 105 U. S., 667; Norton *vs.* Shelby County, 118 U. S., 425, 440; Railroad Co. *vs.* Georgia, 98 U. S., 359, 366; Baldwin *vs.* Kansas, 129 U. S., 52, 57."

In Post *vs.* Supervisors, 105 U. S., 667, Mr. Justice Gray said:

* * *

87 "Third. The construction uniformly given to the constitution of a State by its highest court is binding on the courts of the United States as a rule of decision.

"Fourth. An act of the legislature of a State which has been held by its highest court not to be a statute of the State, because never passed as its constitution requires, cannot be held by the courts of the United States, upon the same evidence, to be a law of the State.

"Fifth. That which is not a law can give no validity to bonds purporting to be issued under it, even in the hands of those who take them for value and in the belief that they have been lawfully issued.

"It was accordingly held that the act of the General Assembly of Illinois of Feb. 18, 1857, under which the bonds in suit were issued, having been adjudged by the supreme court of that State in 1870, in the cases of Ryan *vs.* Lynch (68 Ill., 160) and Miller *vs.* Goodwin (70 *id.*, 659), upon proof that the journals did not show it to have been enacted in conformity with the requirements of the constitution, to have never become a law, and to have conferred no power, although referred to in later statutes as an existing law, those decisions must govern the action of the courts of the United States.

"The weight of those decisions, as authoritative exposition, of the constitution of the State, is not affected by the fact that these plaintiffs were not parties to the suits in which they were delivered. Township of Elmwood *vs.* Marcy, 92 U. S., 289; Township of East Oakland *vs.* Skinner, 94 *id.*, 255."

The contention of the appellees that there were prior adjudications of the supreme court of North Carolina inconsistent with the decisions of that court in the cases of Union Bank of Richmond *vs.* Commissioners of the Town of Oxford, and Board of Commissioners of Stanly County *et al. vs.* Snuggs, *supra*, which had become rules of property, and which were overruled by those decisions, is not sustained by an analytical examination of the cases referred to, and in our opinion that court has not, in any of the cases called to our attention, enunciated a doctrine really in conflict with its decisions

in the two cases we have last mentioned. It is true that in some instances the language used by the court is misleading in its
88 tendencies, and even susceptible of the said construction so placed upon it, but a careful consideration of the cases, and of the facts to which they relate, forces the conclusion that the court had no intention of including within the purview of its judgment bills of the character of those embraced by the provisions of art. 2, section 14 of the constitution of the State of North Carolina.

In Carr *vs.* Coke, 116 N. C., 243, the supreme court held that the certificate of the presiding officers is conclusive that the bill has passed, but that case does not decide that such certificate is proof that the yeas and nays were entered upon the journal; that question was not then before the court, and that decision should be considered in the light of the facts under which it was written.

In Broadnax *vs.* Groom, 64 N. C., 244, the matter discussed and decided had reference to art. 2, sec. 12 of the constitution, which is in the following words: "The General Assembly shall not pass any private law, unless it shall be made to appear thirty days' notice of application to pass such a law shall have been given, under such direction and in such manner as shall be provided by law." The question was whether the courts would go behind the signatures of the presiding officers in order to ascertain if certain preliminary matters had been complied with, and the result reached was that the courts would presume that the legislature had ascertained that the notice required had been given, and that the certificate of the presiding officers must be regarded as conclusive of the subject.

The case of Scarborough *vs.* Robinson, 81 N. C., 236, relates to art. 2, sec. 23 of the constitution, which reads as follows: "All bills and resolutions of a legislative nature shall be read three times in each house before they pass into laws, and shall be signed by the presiding officers of both houses." The question was if the proper construction of said section would admit of the enforcement, as a law, of a bill which had passed both houses of the General Assembly, but had not been signed by the presiding officers. The decision was that such a bill was incurably defective.

In State *vs.* Patterson, 98 N. C., 660, 4 S. E. 350, the supreme court construed article 2, sec. 21, which is as follows: "The
89 style of the acts shall be, 'The General Assembly of North Carolina do enact.'" Judge Merrimon, in delivering the opinion of the court, said: "More particularly, for the present purpose, when the constitution prescribes and directs, in terms or by necessary implication, that a particular power shall be exercised in a specified way, or a particular thing shall be done by a particular co-ordinate branch of government (as the legislature), or by a particular officer or class of officers, and prescribes the way and manner of doing it, such direction cannot be disregarded. A due observance of it is essential, because the constitution so provides, and its provisions are not in vain or of trifling moment. It is not the nature of constitutions of government to provide non-essentials—useless, unimportant details, such as may be disregarded and dispensed with. As we have said, they are organic, made upon solemn

consideration by the sovereign authority, and contain general, essential provisions. Details are avoided in them, unless deemed important—essential. Non-essential details are left in the discretion of those who exercise and administer the powers of government. If this were not so, why prescribe the way and manner? Why not leave these things to convenience, and the authority charged with the exercise of the power? Why direct them? Why restrict them? And if such directions may be disregarded, ignored, suspended in some respects, then to what extent, and in what respect? If one coordinate branch of the government, or any class of officers, may do so, why may not another, and all, as to duties devolved upon them, respectively, directly by the constitution? The answer to these and like questions must be that requirements of the constitution shall prevail and be observed; and when it prescribes that a particular act or thing shall be done in a way and manner specified, such direction must be treated as a command, and an observance of it essential to the effectiveness of the act or thing to be done. Such act cannot be complete, such thing is not effectual, until done in the way and manner so prescribed." This case was decided December 5, 1887, and indicated clearly the absolute necessity of a strict observance of all the requirements of the constitution in the matter of the enactment of laws, and is in entire harmony with the later decisions of that court, now the subject of criticism by counsel in connection with the questions under consideration. In this connection, it is well to keep in mind the fact that the bonds held by the complainant below were not issued until after July 1, 1890.

90

The case of Field *vs.* Clark, 143 U. S., 649, is not in conflict with the conclusion we reach. The particular subject we dispose of was specially pretermitted by the court in that case, as follows: "In regard to certain matters the constitution expressly requires that they shall be entered on the journal. To what extent the validity of legislative action may be affected by the failure to have those matters entered on the journal, we need not inquire. No such question is presented for determination. But it is clear that, in respect to the particular mode in which, or with what fullness shall be kept the proceedings of either house relating to matters not expressly required to be entered on the journal, * * * these and like matters were left to the discretion of the respective houses of Congress."

The court below held that the legislation relating to the Yadkin Railroad Company, under which the election authorizing the bonds to be issued was held was invalid, because the requirements of the constitution of North Carolina, as to entering the yeas and nays on the journal, were not complied with. In this we agree with that court. But it also held that under sections 1996–2000 of the Code of North Carolina, the county commissioners had the power to subscribe for and issue the bonds, notwithstanding the fact that the proposed railroad had not then been begun, and though the citizens of the county had not any direct interest in it. This ruling of the court below is opposed to the construction put upon those sections

of the North Carolina Code by the supreme court of that State, and, considering the facts connected with this controversy, we take the construction of that court as the ruling to be followed by us at this time.

The decree appealed from is reversed, and this cause is remanded, with directions to dissolve the injunction, discharge the receiver, and dismiss the bill.

91 And on the same day, to wit: August 11, 1899, the court made and entered the following decree:

Decree.

Filed Aug. 11, 1899.

United States Circuit Court of Appeals, Fourth Circuit.

BOARD OF COMMISSIONERS OF STANLY COUNTY, N. C., *et al.*, Appellants,
vs.
W. N. COLER AND COMPANY, Appellee.
No. 290.

Appeal from the circuit court of the United States for the western district of North Carolina.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, reversed with costs, and this cause is remanded to the circuit court of the United States for the western district of North Carolina, at Charlotte, with directions to dissolve the injunction, discharge the receiver, and dismiss the bill.

It is further ordered that the mandate of this court issue after the expiration of 10 days from the date hereof.

NATHAN GOFF.

August 11, 1899.

92 Afterwards on another day, to wit: August 23, 1899, the mandate is issued and transmitted to the clerk of the United States circuit court, at Charlotte, North Carolina.

Petition for Rehearing.

Presented to the court Nov. 6, 1899.

93 United States Circuit Court of Appeals, Fourth Circuit.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, County Treasurer, Appellants, *versus* W. N. COLER AND COMPANY, Appellees. } No. 290.

Petition of complainants, W. N. Coler & Company, appellees, to the circuit court of appeals for the fourth circuit, to rehear the appeal, as above entitled, and reconsider the judgment and opinion of said court rendered August 11, 1899.

To the honorable the judges of the circuit court of appeals for the fourth circuit:

The petition of W. N. Coler and Company, complainants, in the above-entitled suit, prays this honorable court to rehear the above-entitled appeal, and to reconsider the decree and opinion therein rendered, and respectfully shows to this honorable court the reasons and grounds therefor, as follo :

The petitioners understand from the reading of the opinion of his honor, Judge Goff, filed on the 11th of August, 1899, that the circuit court of appeals felt bound by the decisions of the supreme court of North Carolina, rendered after the issue and sale of the bonds to complainants, who purchased them for value, and without notice,

Presented Nov. 6, 1899.

94 in good faith, and relying upon their being valid bonds of the county of Stanly, as set out in the bill. The cases to which the honorable court refer in the opinion filed are Union Bank of Richmond *vs.* Commissioners of Town of Oxford, 119 N. C., 214, 25 S. E. 966; Board *vs.* Snuggs, 121 N. C., 394, 28 S. E., 539; City of Charlotte *vs.* Shepard, 120 N. C., 411, 27 S. E. 109; Rodman *vs.* Town of Washington, 122 N. C., 39, 30 S. E. 118; Board *vs.* Call (N. C.), 31 S. E. 481, in which case it was also held that sections 1996–2000 of the Code of North Carolina, "authorizing county commissioners to subscribe stock to a railroad company when necessary to aid in the completion of a railroad, do not include a railroad not commenced before the constitution of 1868 was adopted."

As your petitioners before averred, these cases were decided long after the sale of the bonds, and purchase of the same, in the year 1889. Your petitioners further aver that it appears from the reading of the opinion of this honorable court that its decisions in the respect suggested is based upon the case of Leeper *vs.* Texas, 139 U. S., 462, 467, and upon the case of Post *vs.* Supervisors, 105 U. S., 667.

In the Leeper case there was a writ of error to a State court, and

in the Post-Supervisors case the writ of error was to the circuit court of the United States. The principles governing these two cases, as your petitioners aver, are laid down clearly by Justice Gray in the case of Central Land Company *vs.* Laidley, 159 U. S. R., page 103, and by Justice Peckham, in Turner *vs.* Wilkes County Commissioners, 173 U. S. page 461.

In the Laidley case, on page 111, Justice Gray says:

"The decisions cited by the plaintiff in error to support the jurisdiction of this court in the case at bar were either cases in which the writ of error was upon a judgment of a State court, which gave effect to a statute, alleged to impair the obligation of a contract made before any such statute existed, as in Louisiana *vs.* Pillsbury, 105 U. S., 273; in Chicago Ins. Co. *vs.* Needles, 113 U. S. 574, and in Mobile & Ohio Railroad *vs.* Tennessee, 153 U. S. 486, or else the writ of error was to a circuit court of the United States, bringing
95 to this court the whole case, including the question how far the court of the United States should follow the decisions of the highest court of the State, as in Gelpecke *vs.* Dubuque, 1 Wallace, 175, 205; Olcott *vs.* Supervisors, 16 Wall., 678, 690; Douglass *vs.* Pike County, 101 U. S., 677, 686; Anderson *vs.* Santa Anna, 116 U. S., 356, 361, and other cases cited in Louisiana *vs.* Pillsbury, 105 U. S., 278, 295."

Your petitioners aver, that the case at bar is an appeal to the circuit court of appeals, from a decree of a circuit court of the United States, "bringing to this court the whole case, including the question, how far the courts of the United States should follow the decisions of the highest court of the State."

Your petitioners further aver that in the last number of the U. S. Reports, vol. 174, page 499, in the case of Wade *vs.* Travis County, this principle is discussed by Justice Brown.

That justice says, in the outset, the case involves "the weight to be given to alleged conflicting decisions of the supreme court of Texas, as to the validity of such bonds."

The case was begun in the circuit court of the United States, and the judgment of the court was affirmed by the circuit court of appeals. Upon plaintiff's petition for certiorari the writ was allowed, and the Supreme Court reversed the decisions of these courts, which were against the validity of the bonds, as being issued in violation of the constitution of Texas, and adjudged that they were valid and legal bonds. On page 508, the justice says:

"In determining what the laws of the several States are, which will be regarded as rules of decision, we are bound to look, not only at their constitutions and statutes, but at the decisions of their highest courts, giving construction to them." Post *vs.* Supervisors, is one of the cases cited in support of this rule, by the court.

"If there be any inconsistency in the opinions of these courts, the general rule is," adds the justice, "that we follow the latest settled adjudications in preference to the earlier ones."

After laying down the general rule, as above, Justice Brown says:

"One exception has been admitted to this rule, where, upon the

faith of State decisions, affirming the validity of contracts
96 made, or bonds issued, under a certain statute, other contracts have been made, or bonds issued, under the same statute before the prior cases were overruled. Such contracts and bonds have been held to be valid, upon the principle that the holders, upon purchasing such bonds, and the parties to such contracts, were entitled to rely upon the prior decisions as settling the law of the State. To have held otherwise, would enable the State to set a trap for its creditors, by inducing them to subscribe to bonds, and then withdrawing their security. Gelpecke *vs.* Dubuque, 1 Wall., 175. Other cases are cited for this exception, including "Burgess *vs.* Seligman, 107 U. S., 20."

Your petitioners further aver, that what the state of the decisions is, in a court of highest jurisdiction, upon a given subject, is a question of fact, to be passed on by the court, in the first instance. And if, upon an examination of the cases, they appear to support a principle, the court will adjudge that there exists a certain course of decision for that period. If there are decisions which appear to support the principle, upon which complainants, your petitioners, base their contention that the bonds in question are valid securities, it is to those decisions only that the court will look.

Your petitioners respectfully aver that his honor, Judge Goff, in his opinion in this case, uses the following words:

"The contention of the appellees that there were prior adjudications of the supreme court of North Carolina, inconsistent with the decisions of that court in the cases of Union Bank of Richmond *vs.* Commissioners of the Town of Oxford, and Board of Commissioners of Stanly County *et al. vs.* Snuggs, *supra*, which had become rules of property and which were overruled by these decisions, is not sustained by an analytical examination of the cases referred to, and, in our opinion, that court has not, in any of the cases called to our attention, enunciated a doctrine really in conflict with its decisions in the two cases we have last mentioned. It is true that in some instances the language used by the court is misleading in its tendencies, and even susceptible of the construction so placed upon it, but a careful consideration of the cases, and the facts to which they
relate forces the conclusion that the court had no intention
97 of including within the purview of its judgment bills of the character of those embraced by the provisions of art. 2, section 14 of the constitution of the State of North Carolina."

In the light of the above, your petitioners further aver that if the decisions relied on by complainants "are susceptible of the said construction so placed upon" them, this court, in favor of an innocent bondholder, relying upon that construction, and acting in good faith in the purchase of the bonds, will so construe the decisions as to uphold the securities.

The above comes directly within the rule laid down by Justice Gray, in Louisville &c., R'y Co. *vs.* Louisville Trust Company, 174 U. S. R., on pages 573 and 574. Justice Gray says:

"In Merchants' Bank *vs.* State Bank, 10 Wall., 604, this court stated, as an axiomatic principle in the law of corporations, this

proposition: 'Where a party deals with a corporation in good faith—the transaction is not *ultra vires*—and he is unaware of any defect of authority, or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity, in fact, exists. If the contract can be valid, under any circumstances, an innocent party in such case, has a right to presume their existance, and the corporation is estopped to deny them.' 10 Wall., 644, 645. The proposition was supported by citations of many English and American cases, and among them Royal British Bank *vs.* Turquand (1856) 6 El. & Bl., 327. And the justices of this court, while differing among themselves in the application of the principle to municipal bonds, have always treated Royal British Bank *vs.* Turquand, as well decided upon its facts. Knox County *vs.* Aspinwall, 21 Howard, 539, 545; Mofan *vs.* Miami County, 2 Black, 722, 724; Gelpecke *vs.* Dubuque, 1 Wall., 175, 203; St. Joseph *vs.* Rodgers, 11 Wall., 644, 666; Humboldt *vs.* Long, 92 U. S., 642, 650. And see Zabriskie *vs.* Cleveland, Columbus and Cincinnati Railroad, 23 Howard, 381, above cited."

The cases cited by Justice Gray, in the above paragraph, are decided upon municipal bonds, and show that the principle, he states, applies to contracts with municipal, as well as to other cor-
98 porations; and the late Justice Miller, in his dissenting opinion in the case of Humboldt Township *vs.* Long, 92 U. S. R., pages 650 and 651, says the case of Knox County *vs.* Aspinwall, 21 Howard, 539, the original case on which the rule and principal are based, is itself based upon The Royal British Bank *vs.* Turquand.

Your petitioner respectfully avers that this court will adopt the view of this question, contended for by them, and as said by Justice Gray, if, "under any circumstances," the bonds can be upheld and declared valid, this court will so adjudge.

Your petitioners further aver that from their understanding of the opinion of the court in this case, it is based upon the view of the court that it is bound by the decision of the supreme court in the case Board of Commissioners *vs.* Snuggs, 121 N. C., 394, in its construction of sections 1996, 1997, 2000, which sections are among the recitals in the bonds in question. It should be remembered that, in the above case, no bondholder was a party, and the decision is put upon the distinct ground, that the sections of the code relied on do not apply, and do not confer the power upon the corporate authorities to issue such bonds, for the sole reason that it is not shown the citizens of the county had an interest in the bonds, and that the road was an unfinished railroad.

And your petitioners aver this court is not bound by this construction of these sections of the code, for the reasons set out in the foregoing paragraph of this petition. If a construction can be placed upon these sections, so as to uphold the bonds, this court will adopt that construction.

The supreme court of North Carolina, in Belo *vs.* Commissioners,

the leading case upon the subject of municipal bonds, and the effect of recitals in the bonds, lays down the law as follows;

"While the decisions are very uniform that the record of the justice's court, affirming the fact of compliance with the conditions precedent to the subscription of stock is conclusive, and estops the county from denying the validity of the bonds in the hands of a *bona fide* holder before maturity, they are equally uniform in giving the same effect to the recitals in the bonds themselves, that
99 they had been issued in pursuance of the law which authorized their issue. The recital is a determination of the question, and the holder has a right to rely on it. Town of Coloma *vs.* Evans, 92 U. S., 484. Knox County *vs.* Aspinwall, 21 Howard, 539. Mr. Justice Gray says: "In the leading case of Knox Co. *vs.* Aspinwall, the decision was rested upon two grounds. One of them was that the mere issue of the bonds containing a recital that they were issued in pursuance of the legislative act, was a sufficient basis for the assumption by the purchaser that the conditions on which the county was authorized to issued them had been complied with, and it was said the purchaser was not bound to look further for evidence of such compliance, though the recital did not affirm it. This position was supported by reference to the Royal British Bank *vs.* Turquand, 6 Ellis and Blackburn, in a case in the exchequer chamber, which fully sustains it."

The foregoing, as your petitioners aver, are the words of Justice Bynum in a decision which has never been departed from. Here the supreme court, in 1877, approved of the doctrine in the Royal British Bank case, upon which Knox *vs.* Aspinwall was based.

If a bondholder had been a party to the case of Board *vs.* Snuggs, it is not to be supposed that the court would have decided the case as it did. They could not without overruling Belo *vs.* Commissioners. Whether the citizens had an interest in the railroad, and whether the railroad was finished, were matters to be passed on by somebody. There was no one else to pass upon them but the board of commissioners, named in the sections. As your petitioners aver, these were conditions, and it was not for the bondholder to come and ascertain whether they were complied with or not. All he had to do was to look to the recitals in the bonds.

For the reasons above set forth, the appellees respectfully submit to this honorable court their petition for a rehearing of the appeal in the case of Board of Commissioners of Stanly County *et al. vs.* Coler & Co., and ask leave to re-argue the same.

Respectfully submitted,

W. N. COLER & COMPANY, *Appellees.*

CHARLES PRICE,
Solicitor for Complainants, Appellees.

100 I, Charles Price, solicitor for W. N. Coler & Company, appellees, humbly conceive that the appeal in the petition above referred to is proper to be reheard before this court, and that said petition is sufficient in law and fact to warrant the rehearing prayed for. Wherefore, I do accordingly so certify, and do further certify,

that, in my opinion, a mistake has been made and error committed in the decision of said appeal by this court, and that said mistake and error will be perpetuated, unless said appeal is reheard. And that this application is not made for delay, but in good faith for the reasons above given.

CHARLES PRICE,
Solicitor for Complainants, Appellees,
W. N. Coler & Company.

Dated 6th of November, 1899.

101 *Order Staying Further Proceedings.*

Filed Nov. 21, 1899.

United States Circuit Court of Appeals, Fourth Circuit.

BOARD OF COMMISSIONERS OF STANLY COUNTY, N. C., *et al.*, Appellants,
vs.
W. N. COLER AND COMPANY, Appellees.
No. 290.

Appeal from the circuit court of the United States for the western district of North Carolina.

In the above-entitled cause, there having been presented a petition for a rehearing, by the appellees, and the cause of The Commissioners of Wilkes County, N. C., *vs.* W. N. Coler & Company, having been certified to the Supreme Court of the United States for instructions upon certain points of law, it is ordered that the petition to rehear in the above cause, be continued, to await the decision of the Supreme Court in the Wilkes County cause; and that all further proceedings in the circuit court in which the cause of W. N. Coler & Company *vs.* Commissioners of Stanly County is pending, be suspended to await the further order of this court.

Nov. 21, 1899.

CHARLES H. SIMONTON,
Circuit Judge, Presiding.

102 May 15, 1901 (May term, 1901).—Cause came on for argument on petition for rehearing and is argued by counsel and submitted.

Feb. 4, 1902 (February term, 1902).—The court announced and filed its opinion, which is as follows, to wit:

Opinion.

Filed Feb. 4, 1902.

103 United States Circuit Court of Appeals, Fourth Circuit.

THE BOARD OF COMMISSIONERS OF Stanly County and I. W. Snuggs, County Treasurer, Appellants, *vs* W. N. COLER & COMPANY, Appellees. | No. 290. Appeal from the Circuit Court of the United States for the Western District of North Carolina.

(Argued May 15, 1901; decided Feb. 4, 1902.)

Before Goff, circuit judge, and Morris and Boyd, district judges.

A. C. Avery and James E. Shepherd (Avery & Avery, Schenck & Schenck and Shepherd & Busbee on briefs) for appellants, and Charles Price (John F. Dillon and Harry Hubbard on briefs) for appellees.

Rehearing.

MORRIS, *District Judge:*

The opinion expressing the conclusions of this court on the first hearing of this case was filed August 1, 1899 (96 Federal Reporter, 284).

Upon the appellees' petition for a rehearing the whole case has been fully re-argued in connection with the appeal in Wilkes County *vs.* Coler, decided at this term, and in connection with the answers of the Supreme Court of the United States to the questions certified in that case. 180 U. S., 506.

104 The bonds in question are as follows:

"*County of Stanly Six Per Cent. Bond.*

"Stanly County, State of North Carolina, is indebted to the bearer in the sum of five hundred dollars payable, * * * &c., &c. This bond is one of a series of eighty of the denomination of one thousand dollars each and forty of the denomination of five hundred, making a total of one hundred thousand dollars, issued by authority of an act of the General Assembly of North Carolina, ratified the third day of March, A. D., 1887, entitled An act to amend the charter of the Yadkin Railroad Company, and of sections 1996, 1997, 1998 and 1999 of the Code of North Carolina, and authorized by a majority of the qualified voters of Stanly county, at an election regularly held for that purpose on the 15th day of August, A. D., 1889, duly ordered by the Commissioners of Stanly County.

"This series of bonds is issued to pay the subscription of one hundred thousand dollars made by Stanly county to the capital stock of the said railroad known as 'The Yadkin Railroad Company,' * * * &c., &c.

"In testimony whereof the chairman of the Board of County Com-

missioners of Stanly County hath hereunto subscribed his name for and on behalf of said board and the clerk of the superior court of Stanly county hath countersigned the same and affixed thereto the seal of said superior court this fourth day of July A. D., 1890."

The recitals of present interest are (1) that the bonds are issued by authority of the act of March 3, 1887, and (2) of sections 1996, 1997, 1998 and 1999 of the code, and (3) are authorized by a majority of the votes of the county.

The act of March 3, 1887, the supreme court of North Carolina has decided, never became a law of North Carolina, so far as it undertook to give authority to issue the county bonds, for the reason that it was not passed with the special formality required by section 14 of article 2 of the North Carolina constitution of 1868, which declares that no law shall pass authorizing a county to raise money on its credit or impose a tax, unless the bill be read three several
105 times in each house of the General Assembly and pass three several readings on different days, and the yeas and nays on the second and third reading of the bill are entered on the journals.

The recital of the invalid enactment of March 3, 1887, however, does not invalidate the bonds if there was in force at the time the bonds were issued other valid legislation which gave power to Stanly county to issue them, and it is urged upon us by counsel for the bondholders that the recited sections of the code, reasonably construed and applied as understood at the time the bonds were issued, gave sufficient power and authority.

Anderson County Commissioners *vs.* Beal, 113 U. S., 227.
Commissioners *vs.* January, 94 U. S., 202.
Evansville *vs.* Dennett, 161 U. S., 434–443–444.
Knox County *vs.* Ninth Nat. Bank, 147 U. S., 91.
Wilkes County *vs.* Coler, 180 U. S., 506–524.

These sections of the code were originally enacted as chapter 171 of the laws of North Carolina of 1868–1869, and were re-enacted as sections 1996, 1997, 1998, 1999 and 2000 of the code of 1883 with all the formality required by section 14 of article 2 of the constitution with regard to a law allowing counties to pledge their credit and impose a tax for that purpose.

Commissioners *vs.* Snuggs, 121 N. C., 394–401.

The following are sections 1996 and 1997:

Section 1996 of the Code of North Carolina.

"The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

Section 1997 of the Code of North Carolina.

"The board of commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and, if a majority of the board shall vote for the proposition, this shall be entered upon the record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the board shall order an election, to be held on a notice of not less than thirty
106 days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board of county commissioners. And, if a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the amount of stock proposed by them and submitted to the people, subject to all the rules, regulations and restrictions of other stockholders in such company or companies. Provided, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper."

The bonds were duly authorized by a majority of the qualified voters of Stanly county and were dated July —, 1890, and were issued from time to time as the railroad was built and were placed on the market and sold, and for four years a tax was levied and collected by the county and the interest coupons paid. When the tax for the fifth year had been collected the superior court of Stanly county in 1897, at the instance of the commissioners of the county and certain tax-payers, held the bonds to be invalid and enjoined the treasurer of the county from paying the interest, and on appeal the supreme court of North Carolina affirmed the ruling.

Commissioners *vs.* Snuggs (1897) 121 N. C., 394.

The supreme court of North Carolina (Chief Justice Faircloth dissenting) held that Stanly county had no power or authority under the above-recited sections of the code, even with an affirmative vote of the qualified voters of the county, to issue bonds and levy a tax for their payment in aid of a railroad not begun before the adoption of the State constitution of 1868.

When this case was first heard in this court the argument of the counsel for the bondholders was largely devoted to the effort to show that the decision of the supreme court of North Carolina against the validity of the act of March 3, 1887, (amending the charter of the Yadkin Railroad Company and authorizing Stanly county to subscribe for its stock and issue these bonds) and declaring that act invalid because not passed as required by the State constitution was a ruling which this court ought not to follow. That question
107 has been settled in favor of the county by the Supreme Court of the United States.

Wilkes County *vs.* Coler, 180 U. S., 506.

The other question, how far this court was bound to follow the rulings of the supreme court of North Carolina in its construction of the sections of the code recited in the bonds, was not fully dis-

cussed and this is the question we are urged to re-examine up
this rehearing.

The articles of the code, first enacted in 1868–'9, chapter 1
and re-enacted as part of the code in 1883 before the Stan
county bonds were authorized or issued, does, in the broadest ter
by section 1996, declare that "the boards of commissioners of t
severl counties shall have power to subscribe stock to any railro
company when necessary to aid in the completion of any railro
in which the citizens of the county may have an interest."

The supreme court of North Carolina declared in Commissione
vs. Snuggs (1897) that this language was to be held to mean th
the railroad must be an unfinished one which had been beg
before the subscription was made and that it must also be a ra
road in which the county had a direct pecuniary interest. T
question now to be re-examined is whether that construction is o
to which as a proposition of law we can assent, and if not are
bound to follow the decision of the supreme court of North Ca
lina.

The case of Commissioners of Stanly County *vs.* Snuggs was n
a case to which any bondholder was a party. The county comm
sioners and certain tax-payers of the county were the plaintiffs, a
the defendant was the county treasurer who had no personal i
terest to resist the plaintiffs and who represented no bondhold
and was the appointee of the county commissioners. The bon
had been sold as negotiable securities and had been over four yea
on the market and had been purchased by widely scattered i
vestors. The railroad into Stanly county had been built and w
in operation, and for over four years the authorities of the coun
had recognized the bonds as valid obligations of the county an
had paid the interest. The case was, in effect, a direct attack upo
the property of *bona fide* holders of the bonds in which they ha
no hearing.

108 It seems, therefore, to be a case in which it is our duty
examine the question independently, with, however, a
earnest disposition to lean towards the conclusion arrived at by th
supreme court of North Carolina.

Folsom *vs.* Ninety-six, 159 U. S., 611, 627.
Burgess *vs.* Seligman, 107 U. S., 20–33–34.
Loeb *vs.* Columbia Township, 179 U. S., 472–493.

Was there anything in the constitution, laws or decisions
North Carolina which should have given warning to purchasers
the bonds that the power given to counties by section 1996 of th
code was not applicable to the Yadkin Railroad Company in Stanl
county?

As to State aid, the constitution clearly said (article V, section 4
that it should only be given (unless submitted to a direct vote
the people of the State) "to aid in the completion of such railroad
as may be unfinished at the time of the adoption of this constitu
tion, or in which the State has a direct pecuniary interest."

The language used by the framers of the constitution when dea

ing with the aid which might be given, not by the State but, by counties to railroads, is quite different and it was to be presumed that the difference in language was significant of a corresponding difference in meaning and intention. With regard to counties, the language of the constitution is simply (article VII, section 7,) that no county shall loan its credit, nor shall any tax be levied, except for necessary expenses thereof, unless by a vote of the qualified voters therein.

With regard to section 1996 of the code, there had not been, prior to the issuing of the bonds in suit, any decision of the supreme court of North Carolina construing its meaning. The impart of its words "The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest" was to be understood by those whose rights might be affected by them in their natural, ordinary, generally received sense.

In the first place, there is nothing in the words or their context to indicate that when enacted in the code in 1883, they were not intended to be a guide for the future and not for the past.

109 The office of laws is to operate upon future actions, and the universal rule is that statutes are prospective in their operation, unless the statute itself declares it to be retrospective.

It would seem, therefore, that while the code remained unaltered whenever the case arose in which the citizens of a county might have an interest in a railroad, and county aid was necessary to its completion, section 1996 gave power to the board of commissioners to subscribe to its stock.

James *vs.* Milwaukee, 16 Wal., 159.

Then follows section 1997, which prescribes how the board of commissioners shall by vote determine the amount and whether the subscriptions shall be in bonds, money or property, and how they shall, when they have so determined, submit the proposition to a vote of the people, and reiterates the provision that "the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper. Section 1998 provides how the election shall be had. Section 1999 declares that, in case the county shall subscribe the amount proposed in bonds, the county commissioners shall have power to fix the rate of interest and when and where it shall be payable and to raise by taxation from year to year the amount necessary to meet the interest on said bonds. Section 2000 provides, that the taxes to be raised for the payment of interest and principal shall be collected in like manner as other State taxes, and paid into the hands of the county treasurer to be used by the chairman of the board of county commissioners "as directed by this chapter."

It would seem that the fair import of this valid legislation would be to give to the County Commissioners of Stanly County, power to do the very thing they have done in issuing these bonds. It is true that the supreme court of North Carolina has decided to the con-

trary, and have invalidated the bonds by its decision in 1897, i
Commissioners *vs.* Snuggs, but that was a case instituted five yea
after the bonds were put on the market, and in which the bon
holders were not parties or represented. The supreme court
North Carolina was led to the conclusion that when the act
1868–'9 was re-enacted in the code, section 1996, and the fo
110 succeeding sections, could have had reference to no case e
cept where the county had a direct pecuniary interest in
railroad which had been begun and was unfinished at the time
the adoption of the constitution in 1868, and could not apply to t
Yadkin railroad which was begun in 1889.

With this conclusion, after the most careful consideration, an
having now heard the matter re-argued, a majority of the judg
composing this court are unable to agree. The framers of the co
stitution of the State, when intending to express such restrictio
used such entirely different language that it is difficult to suppos
that the legislature in 1868–'9 and in 1883, with that language i
the State constitution, intended the same thing when they used th
language now found in the code.

The words "in which the citizens of the county may have an i
terest" would seem to be the appropriate words to express the ge
eral interest which the whole body of the people of a county hav
in a railroad which they believe will benefit them as distinguishe
from a direct pecuniary interest of the county as a corporatio
When the framers of the constitution intended to limit and restri
the State in lending its credit to railroads they said "except to ai
in the completion of such railroads as may be unfinished at th
time of the adoption of this constitution, or in which the State ha
a direct pecuniary interest, unless by a direct vote of a majority
the people of the State who should vote thereon.

How natural and to be expected it would be that if the legislatur
had intended to restrict county aid to the same class of railroad
they would have used somewhat similar language.

Finding that section 1996 gives power to the county to subscrib
to stock in any railroad "when necessary to aid in the completio
of any railroad in which the citizens of the county may have an in
terest," is it not reasonable to read it as meaning to complete th
raising of the money necessary to build the road? When the rout
is surveyed and determined upon and the charter for a privat
corporation obtained and part of the stock subscribed, but not suf
ficient to complete the road, is it not most natural with regard t
such a projected road that the authority to the county to subscrib
stock should be spoken of as aiding in the completion of th
111 road? To complete a projected railroad for which a charte
has been obtained and for constructing which part of the
stock has been subscribed, the *the* thing needed is more subscrip
tions of stock. And when the subject in hand is aiding in the com
pletion of the road by subscription of stock those ai in its com
pletion who make the additional subscriptions to the stock.

The language of Mr. Justice Brewer in Andes *vs.* Ely, 158 U. S.
312–321, is pertinent: "While courts may properly see to it tha

proceedings for casting burdens upon a community comply with all the substantial requirements of a statute in order that no burden may be recklessly or fraudulently imposed, yet such statutes are not of a criminal character, and proceedings are not to be so technically construed or limited as to make them a snare to those who are encouraged to invest in the securities of the municipality." Cited also in Provident Trust Co. *vs.* Mercer County, 158 U. S., 593–600.

In the resolution adopted by the board of county commissioners, in June, 1889, ordering an election to be held in Stanly county to ascertain whether a majority of the voters favored the subscription, it was stated "it appearing that the citizens of said county have an interest in said railroad," and it was provided "If the proposition to vote said subscription shall be ratified by a majority of the qualified voters of said county at said election then said bonds shall be delivered to said Yadkin Railroad Company as follows: "Twenty-five thousand dollars when ten miles of said road is constructed and in operation from Rowan County line into said county of Stanly; twenty-five thousand when said road is constructed and in operation from the town of Salisbury to the town of Albemarle, and the remaining fifty thousand dollars when said road is constructed and in operation from the town of Salisbury to the village of Norwood, in Stanly county; provided that the said railroad company shall be required to begin the construction of said road at Salisbury within ninety days from and after the first day of October, 1889, and to complete the same to Norwood within 18 months thereafter, and if not so begun and completed then said bonds shall not be delivered to said company; provided, however, that the Board of Commissioners of Stanly County shall have full power and discretion to extend the time for the performance of the conditions and limitations hereinbefore mentioned."

112 Thus it would seem that the board of commissioners and the voters of the county, a majority of whom voted in *in* favor of this proposition, understood very intelligently what was meant by aiding in the completion of a railroad in which the citizens of the county might have an interest.

The meaning given to the language of the code after the rights of the holders of the bonds had vested is too strained, unnatural and unwarranted to be accepted to the destruction of property rights acquired in good faith based upon the ordinary meaning of the language.

Reluctant as we have been, in deference to the opinion announced in Commissioners *vs.* Snuggs, to come to this conclusion, we think there is no escape from it.

Moreover, is not the legal effect of the recital in the bonds stating that they were issued by authority of sections 1996, 1997, 1998, and 1999 of the Code of North Carolina equivalent to a statement that the facts existed which authorized their issue under those sections, viz: that they were issued to aid in the completion of a railroad in which the citizens of the county had an interest, and is not the county now estopped from denying that recital?

It seems to us that many cases have so held:

Chaffee County *vs.* Potter, 142 U. S., 355, 364.
Evansville *vs.* Dennett, 161 U. S., 434–442.
Commissioners *vs.* Nat'l Life Ins. Co., 90 Fed. Rep., 222–230–231.
Hughes County *vs.* Livingston, 104 Fed. Rep., 306–316.
Independent School Dist. *vs.* Rew, 111 Fed. Rep., 1–7–8.
Belo *vs.* Com'rs of Forsythe, 76 N. C., 489–4:3–494–495.

It is urged in behalf of the county that legislation substantially the same in terms as sections 1996 to 2000 of the code had been held to be unconstitutional in 1885 by the supreme court of North Carolina in Barksdale *vs.* Commissioners of Sampson County, 93 N. C., 472 (1885). In that case the question was as to the legality of the tax assessed by the county for the support of schools under a general law giving power to all counties. The objection made was that the tax was in excess of the limit prescribed by the
113 constitution, and that the act allowing the commissioners to exceed the limit was unconstitutional because in disregard of art. V, sec. 1. The tax in that case was levied without being submitted to a vote of the people of the county and was, therefore, inhibited by art. 7, sec. 7, of the constitution. The further objection also prevailed that the tax about to be levied exceeded the limit restriction of section 6 of art. 5, viz: "The taxes levied by commissioners of the several counties shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose and with the special approval of the General Assembly." There is no allegation or evidence in this case that the payment of interest on these bonds requires a tax exceeding that limit, or that the tax collected and in the hands of the county treasurer levied for the purpose of paying the coupons due at the institution of this suit had exceeded that limits.

The case of Galloway *vs.* Chatham R. R. Co., 63 N. C., 147 (1869), cited by counsel for the county, deals exclusively with the constitutional provision restricting the State from aiding railroads without a vote of the people and has no relevancy to cases of county subscriptions.

We find nothing in the decisions of the supreme court of North Carolina prior to the issue of these Stanly County bonds that pointed to any defect of power to issue them under the code sections recited in the bonds. On the contrary, the opinion of that court in Belo *vs.* Commissioners, 76 N. C., 494–495 (1897), is to the effect that as to *bona fide* holders the records of the proceedings of the commissioners affirming the existence of particular facts are conclusive as well as the recitals in the bonds that they have been issued in pursuance of the law which authorized their issue.

The majority of the judges constituting the court on this rehearing are of opinion that the decree of the circuit court should be affirmed.

BOYD, *District Judge*, concurring:

I concur with Judge Morris, in his opinion, filed in this case, and will give my reasons therefor.

114 The county of Stanly issued its bonds, in the sum of one hundred thousand dollars, in the years 1890, 1891, &c., for the purpose of paying its subscription to the stock of the Yadkin railroad, running from Salisbury to a point in Stanly, Norwood, a distance of forty-four miles. It is alleged in the bill that this road runs through the best and most fertile portion of Stanly county for a distance of thirty miles. It is also alleged that the county of Stanly "has received benefits from the same, in the greatly increased value of the lands of the county, in the increased and improved transportation within the limits of the same; and further, by reason of the taxes paid into the treasury of the county by the company in each and every year."

It is also alleged, "that in return for, and in consideration of said subscription, the Yadkin Railroad Company issued to said county of Stanly stock in and to the said amount of one hundred thousand dollars, which stock the county holds now, and has held since the date of the issue of the same, to wit: the year 1891."

It appears also that the interest on the bonds, so issued by the county of Stanly, was paid regularly to complainants, and others holding the bonds until 1897, some time before the commencement of this suit.

It is alleged in the bill, that complainants "bought for valuable consideration, a large sum, the market price, a great number" of these bonds, forty-eight, of the denomination of one thousand dollars each; "that the purchase of the bonds was for value, in good faith and without any notice, express or implied, that there was any suggestion of their being void, invalid or fraudulent; or otherwise than perfectly legal in their issue and sale."

It appears that the payment of the interest on these bonds was stopped by reason of a judgment of the superior court of Stanly county, affirmed by the supreme court of North Carolina, in 1897, in the case of Commissioners *vs.* Snuggs, 121 N. C. R., 394, 401.

In that action, the bonds in question were adjudged void.

It is to be noted, in the first place, that there was no bondholder party to the suit of Commissioners *vs.* Snuggs, it being an action brought against the defendant, Snuggs, to restrain him from paying the interest on the bonds to the holders of the same; the in-

115 terest, in the amount of six thousand dollars, being in his hands, as treasurer, having been paid to him by the sheriff of the county for that purpose, and only that. It was held by him, set apart from all other funds, solely for the purpose of the payment of the interest due July 1st, 1897.

The contention, upon the part of the defendants, as appears from the complaint filed in May, 1897, in the superior court of Stanly in the action against Snuggs, in which they were plaintiffs, was that the bonds sued on here were void, because the acts of 1870 and

1887, were not passed in accordance with the requirements of section 14, article II, "of the constitution of North Carolina, in that neither of the said acts passed its several readings in the house of representatives, on three different days," and that the yeas and nays, if taken at all, were not entered upon the journal, as required, &c., &c. See record, page 20.

In this contention, the plaintiffs in this action, in the State court, were sustained.

In the supreme court, however it was insisted that, in addition to the power conferred by the statutes to issue the bonds, it was, also, conferred by sections 1996, 1997, 1998 and 1999 of the Code of North Carolina, recited in the body of the bond.

The court, as appears from the opinion of Justice Montgomery, failed to uphold this contention, also, upon the sole ground, however, that the road was not shown to be an "unfinished road," and that the "citizens of the county had an interest in the same."

Section 1996 of the Code of North Carolina is as follows: "The board of commissioners of the several counties shall have power to subscribe stock to any railroad company, or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

In the case of Commissioners *vs.* Snuggs, the sections of the code were upheld by the court as valid statutes, and in this case were, for the first time, construed by the supreme court of North Carolina. They were passed regularly, and in accordance with the requirements of the constitution of the State.

The court put its decision upon the ground that the sections of the code did not apply.

116 It was a construction of a valid statute by the court, six years after the bonds in question came into the hands of complainants, innocent purchasers, for value.

In the case of Wilkes County *vs.* Coler, 180 U. S. R., 506, it was decided that the decisions of the highest court of a State, upon the question whether a particular act was passed in such manner as to become, under the State constitution, a law, should be accepted and followed by the Federal courts.

This decision was rendered in a case certified to the supreme court from this court, Wilkes County *vs.* Coler, one of the cases in which Judge Morris has filed the opinions suggested in the outset of this argument; and of a similar nature to this.

The question, then, is in the case under consideration, whether the bonds are valid and legal bonds.

It was contended in the argument that this court is bound by the decisions of the State court in the case of Commissioners *vs.* Snuggs, 121 N. C. R., 394. I think not, and, however much we may regret it, and we do regret it, it is still our duty to decide this case in accordance with the principles, as we understand them, laid down by the Supreme Court of the United States and by this court.

In Burgess *vs.* Seligman, the leading case upon this subject, the Supreme Court of the United States, Justice Bradley delivering the opinion of the court, says: "Where contracts and transactions have

been entered into, and rights have accrued thereon, under a particular state of the decisions, or where there has been no decision of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights were accrued."

Says Justice Bradley further: "Federal courts exercise their own judgment always in reference to the doctrines of commercial law."

The rights of these parties here are to be determined according to the doctrines of commercial law, it being well settled that the bonds in question are commercial securities, negotiable instruments.

Township of Pine Grove *vs.* Talcott, 19 Wall., 666, 667, was an action in the United States circuit court upon coupons cut
117 from bonds issued by that township in aid of a railroad under an act of the General Assembly of Michigan. The plaintiff in error insisted that several decisions of the supreme court of the State, holding that the construction of railroads was not a public corporate purpose, such as townships were authorized by the constitution of Michigan to aid, and that such statute and the bonds issued in pursuance of it were void, were controlling.

The Supreme Court of the United States, in declining to be bound by those decisions, said: "It is insisted that the invalidity of the statute has been determined by the two judgments of the supreme court of Michigan, and that we are bound to follow those adjudications. We have examined those cases with care. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. We think the dissenting opinion in the one first decided is unanswered. Similar laws have been passed in twenty-one States. In all of them but two it is believed their validity has been sustained by the highest local courts. It is not easy to resist the force of such a current of reason and authority. The question before us belongs to the domain of general jurisprudence. In this class of cases this court is not bound by the judgment of the courts of the States where the cases arise. It must hear and determine for itself. Here commercial securities are involved. When the bonds were issued there had been no authoritative intimation from any quarter that such statutes were invalid. The legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal. The general understanding of the legal profession throughout the country is believed to have been that they were valid. The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us, that end can be accomplished unwarrantably, no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the courts of the respective States, we should abdi-

cate the performance of one of the most important duties with which this tribunal is charged, and disappoint the wise and salutary
118 policy of the framers of the Constitution in providing for the creation of an independent Federal judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery."

Justice Harlan, in Commissioners *vs.* Coler, 180 U. S., before referred to, shows that it is only in cases where the State court has held an enactment is not passed in accordance with the requirements of the Constitution, that its decision is controlling.

Here is a construction of a valid statute, recited in the bond, which this court is asked to follow. We are not bound by it, and while we regret it, in this case, we cannot follow it. Says Justice Harlan, in Commissioners *vs.* Coler, page 519, 180 U. S.: "Observe that the issue is not as to the construction, meaning or scope of a statute, but whether that which purports to be a legislative enactment, ever became a law for any purpose."

This paragraph from the opinion of Justice Harlan draws the distinction clearly and expressly between "the issue as to the construction, meaning and scope of a statute," and the issue as to "whether that which purports to be a legislative enactment, ever became a law for any purpose." The court holds that the decisions of the highest court of the State, upon the question as to whether "an enactment in the form of a statute was ever passed, so as to become, under the State constitution, a law," or not, are not to be disregarded.

The question here is not whether the sections of the code relied on were ever passed, as required by the Constitution, so as to become valid laws, statutes of the State, but whether the circuit court of the United States is bound by the "construction, meaning and scope of a statute," passed as required by the Constitution, placed upon such statute by the highest court of a State, after the issue of the bonds, which holds invalid and void bonds, negotiable, instruments, commercial securities, issued by Stanly county, "in good faith, put upon the market, in due course of trade, purchased in open market for value, the purchaser being unaware of any defect of authority or other irregularity on the part of the county, and there being nothing to excite suspicion of any defect or irregularity.

In the leading case of Louisville etc. R'y Co. *vs.* Louisville
119 Trust Co., 174 U. S. R., on pages 573 and 574, Justice Gray says: "In Merchants' Bank *vs.* State Bank, 10 Wall., 604, this court stated, as an axiomatic principle in the law of corporations, this proposition: 'Where a party deals with a corporation in good faith—the transaction is not *ultra vires*—and he is unaware of any defect of authority, or any other irregularity, on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists. If the contract can be valid under any circumstances, an innocent party in such a case has a right to presume their existence, and the corporation is estopped to deny them' (10 Wall., 644, 645), Board of Com'rs, &c., *vs.* Sutliff, 97 Fed. Reports, 270. The proposition was supported

by citations of many English and American cases, and among them, Royal British Bank *vs.* Turquand (1856), 6 El. & Bl., 327, and the justices of this court, while differing among themselves in the application of the principle to municipal bonds, have always treated Royal British Bank *vs.* Turquand as well decided upon its facts. Knox County *vs.* Aspinwall, 21 Howard, 539, 545; Moran *vs.* Miami County, 2 Black, 722, 724; Gelpcke *vs.* Dubuque, 1 Wall., 175, 203; St. Joseph *vs.* Rogers, 16 Wall., 644, 666; Humbold *vs.* Long, 92 U. S., 642, 650. And see Zabriskie *vs.* Cleveland, Columbus Cincinnati Railroad, 23 Howard, 381, above cited."

The cases cited by Justice Gray, in the above paragraph, are decided upon municipal bonds, and show that the principle he states, appl-es to contracts municipal, as well as to other corporations; and the late Justice Miller, in his dissenting opinion in the case of Humbolt Township *vs.* Long, 92 U. S. R., pages 650, 651, says: "The case of Knox County *vs.* Aspinwall, 21 Howard, 539, the original case, on which the rule and principles are based is itself based upon the Royal British Bank *vs.* Turquand."

In 1890, 1891, etc., Stanly county, for the purpose already shown, put the bonds in question upon the market for sale. They were in due form, and contained the usual recitals. These bonds were purchased, in due course of trade, by the complainants, unaware of any defect of authority, or other irregularity, in their issue. There was nothing to excite suspicion of any defect or irregularity in
120 their issue. The railroad was constructed, the county had its stock in the same, and had, for years, paid the interest on the bonds. The county was, each and every year, collecting from the railroad company taxes levied upon the property of the same.

Under conditions like these, I consider it the duty of this court, as said by Justice Gray in the case above cited, to uphold the bonds, to declare them valid, if under any circumstances, the court can do so.

I have shown that this court is not bound by the construction put upon these valid statutes by the supreme court of North Carolina in the Snuggs case, years after the issue and sale of the bonds.

It becomes necessary, then, to inquire as to what construction the court will put upon the statutes. In construing these sections of the code we must do it in the light of the rule laid down by Justice Gray in the Louisville, etc., case.

This is an easy thing to do, when we consider the decision of Belo *vs.* Commissioners, 76 N. C. R., 489. Indeed, it seems to us that if the principles laid down in that case had been called to the attention of the court in the case of Commissioners *vs.* Snuggs, 121 N. C. R., the decision would have been different. As I have already said, no bondholder was a party to that suit. It seems to have been argued, however, but there is no reference to the Belo case in the opinion, and, from that, I take it, there was none in the argument.

In addition to the leading opinion of the court, written by Justice Montgomery, there were two concurring opinions, and in none of them is there any mention of the Belo case. This, to us, is remarkable, when we consider the fact that it is the leading case in North

Carolina, upon the subject of municipal bonds; and the more remarkable when we consider the principles there laid down, decisive of the case here, in favor of the bonds and their validity.

What are these principles? The supreme court, in 1877, in Belo *vs.* Commissioners, 76 N. C. R., 489, the leading case upon the subject of municipal bonds, and the effect of recitals, in the bonds, lays down the law as follows: "While the decisions are very uniform that the records of the justice's court, affirming the fact of compli-
ance with the conditions precedent to the subscription of
121 stock is conclusive and stops the county from denying the validity of the bonds in the hands of a *bona fide* holder before maturity, they are equally uniform in giving the same effect to the recitals in the bonds themselves, that they had been issued in pursuance of the law which authorized their issue. The recital is a determination of the question, and the holder has a right to rely on it (Town of Coloma *vs.* Evans, 92 U. S., 484; Knox County *vs.* Aspinwall, 21 Howard, 539). Mr. Justice Gray says: "In the leading case of Knox Co. *vs.* Aspinwall, the decision was rested upon two grounds. One of them was that the mere issue of bonds containing a recital that they were issued in pursuance of the legislative act was a sufficient basis for the assumption by the purchaser that the conditions on which the county was authorized to issue them had been complied with, and it was said the purchaser was not bound to look further for evidence of such compliance though the recital did not affirm it. The position was supported by reference to the Royal British Bank *vs.* Turquand, 6 Ellis & Blackburn, in a case in the exchequer chamber, which fully sustains it."

Here the court, in 1877, approved of the doctrine in the Royal British Bank case, upon which Knox *vs.* Aspinwall was based—the case Mr. Justice Gray bases his decision upon in the case of Louisville, etc., 174 U. S. R. 573 and 574.

The above are the words of Justice Gray, the same used in the Belo case by Justice Bynum, the leading case on municipal bonds in North Carolina.

To apply these rules to this case, what were the conditions on which the county of Stanly was authorized to issue the bonds? One was "when necessary to aid in the completion of any railroad," and another was "of any railroad in which the citizens of the county may have an interest."

Here was a power, legislative in its character, recited in the bond, to be exercised under certain conditions By whom? The act says the "board of commissioners."

In June, 1889, an order was entered upon the record of the board of commissioners of Stanly county, when they came to consider the proposition to subscribe to the capital stock of the Yadkin railroad,
a part of which was as follows: "It appearing that the citi-
122 zens of said county have an interest in said railroad," etc.

In this same order reference time and again was made to the Yadkin railroad and its construction, and to the conditions upon which it was to be constructed. Amongst others, it was ordered

that "said railroad shall be of standard gauge." See pages 22 and 23 of record, titled Exhibit June Term 1889.

It appeared then to the board, and they, the commissioners, acted upon it, that there was a railroad to be completed, constructed, and that the citizens of the county had an interest in it.

These were the conditions to be complied with, and some authority had to pass upon the same. It was not for the innocent purchaser of the bond to inquire as to whether the conditions were complied with, but for the municipal authorities who put it upon the market, and the recital in the bond that it was issued in pursuance of the power conferred by the sections of the code "was a sufficient basis for the assumption by the purchaser that the conditions on which the county was authorized to issue it had been complied with." (Belo's case, *supra.*)

The proceedings had before the board of commissioners of Stanly county, printed in the record, show that the corporate authorities acted with the sections of the code recited in the face of the bond before them, and that they passed upon all questions left for their determination, as said by Justice Brewer in his opinion in the Mercer County case, on page 601 of volume 170 U. S. R. It shows these corporate authorities were acting in good faith and wanted to perform their duty according to law.

On pages 307, vol. 87, Federal Reporter, in the case of Township *of* Ninety-six *vs.* Folsom, the circuit court of appeals, speaking through Judge Jackson, says: "It will be observed from the inspection of these bonds that their recitals show upon the face of the bond a compliance with the law under which they were issued. The purchaser had a right to assume that all the conditions of the law were complied with, authorizing the issue of the bonds. The question whether they were issued in compliance with the law, was a question that properly belonged to the authorities who were authorized by the acts of the legislature to issue the bonds."

Purchasing these bonds with the recitals they contained,
123 was it required of the purchasers to find out whether the citizens of the county of Stanly had an interest in the railroad? Was it required of them to find out whether the railroad was completed or uncompleted? These are matters for the corporate authorities and for them alone. Says Justice Brewer, in Providence Trust Co. *vs.* Mercer County, 170 U. S. R., page 601,: "By a long series of decisions such recitals are held conclusive in favor of a *bona fide* holder of bonds, that precedent conditions prescribed by statute and subject to the determination of those county officers have been fully complied with."

In the case of Provident Trust Company *vs.* Mercer County, 170 U. S. R., 601, it will be seen that the recitals in the bond, which are printed in the volume, are similar to those in the Stanly bonds.

See also the recent case of Gunnison County *vs.* Rollins, 173 U. S., 255, as to recitals in bonds. Also Independent School Dist. &c. *vs.* Rew, 111 Fed. Rep., page 1.

We understand the rule to be that the purchaser has to look no further than to ascertain if a power has been granted to issue the

bonds. If there is a power, then he can depend upon the recitals in the bonds for the proper exercise of that power.

The above are the rules which have obtained in North Carolina since 1877, the first time they were considered. They are to be found in the case of Belo *vs.* Commissioners, 76 N. C. R., and in the light of the same, so clearly and forcibly stated by Justice Bynum, we must assume if that case had been called to the attention of the court when the Snuggs case was argued, as suggested by Judge Morris, the decision might have been different.

In Bank *vs.* Commissioners of Oxford County, 116 N. C. R., 368, the court says: "The purchaser of such coupons as those sued upon must so far act upon the notice contained in the recitals as a general rule as to examine the statutes referred to and ascertain at his peril whether the essential prerequisites to the validity of the bonds have been met both by legislative and popular action. We hold that upon a fair construction of the organic law and pertinent statutes, and their application to the facts of this case, there has been a sufficient compliance with the essential requirements of the law to render the election valid. We think, therefore, that the court erred in holding that the plaintiff was not entitled to recover and the judgment of nonsuit must be set aside and a new trial granted."

124 The recitals in the bonds in question, as they appear in the record, are: "This bond is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, issued by authority of an act of the General Assembly of North Carolina, ratified the third day of March, 1887, entitled "An act to amend the charter of the Yadkin Railroad Company, and of sections 1996, 1997, 1998 and 1999 of the Code of North Carolina, and authorized by a majority of the qualified voters of Stanly county at an election held for that purpose, on the 15th day of August, 1889, duly ordered by the Board of Commissioners of Stanly County."

Under the decision in the Belo case and the rule to which the court calls attention in the Bank *vs.* Commissioners, both referred to above, the purchaser of the bonds "had only to examine the statutes referred to and ascertain at his peril whether the essential prerequisites to the validity of the bonds, have been met, both by legislative and popular action."

These sections of the code, recited in the bond as authority for their issue, were passed by the legislature according to the constitution, and there is no doubt but that there was a large majority of the voters of the county of Stanly in favor of the issue of the bonds. These things are admitted. So that the bondholder had to look no further than to see if there was a power conferred to issue the bonds, the performance of the conditions was a matter to be determined by the corporate authorities. The bondholders had the right to rely on the recitals for that. They did rely on them. They did all that was required of them.

It was contended by the appellants in the argument that the provisions of section 1996 of the code refer only to those roads that were unfinished in April, 1868, the time of the adoption of the constitu-

tion, and in support of this the attention of the court is called to the following: "This reasoning leads us to the still further conclusion that, at the time when the act of 1868–'9 was brought forward in the code, section 1996 and the four succeeding sections, it could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868." (Commissioners *vs.* Snuggs, 121 N. C. on page 403, 1897.)

125 This case was decided in 1897. The statute of April 10th, 1869, section 1996 of code, made no reference to the constitution of 1868, nor to any other point of time in the past. Every word in section 1996, denoting tense, is in the future tense, and the code went into effect November 1st, 1883.

It is an universal rule of construction that all statutes are prospective in their operation, unless the statute, itself, says to the contrary.

"No statute should be given a retrospective operation, unless its words expressly require such construction." (State *vs.* Littlefield, 93 N. C., 614.)

What words in section 1996 require that its operation be referred to April 1868, fifteen years before it was re-enacted in the code, and one year, before it was ever put in any shape on the statute books of North Carolina. "Upon the same principle of construction, if section 1996 should be re-enacted in the Code of 1900, it would have no application to any road that might be built during the next century, but would apply to roads incomplete in the year 1868, thirty-two years before its enactment." This principle has been passed on by the Supreme Court of the United States in James *vs.* Milwaukee, 16 Wall., 159. In that case a statute authorized a city to lend its credit to any railroad company incorporated and organized, and the court held that companies thereafter organized were intended to be included, and the statute was applicable to them, as well as those in existence. The court said (pp. 160, 161): "The defendant in error insists that the power conferred was confined to companies, already in existence at the date of the act, and such was the opinion of the court below. We entertain a different opinion."

In that case there was no word denoting the future tense—no "shall," as in section 1996,—but the only words used were "incorporated" and "organized."

In this connection we observe that the supreme court of North Carolina, in the Snuggs case, has construed the words of section 1996 of the code, "the citizens of the county may have an interest," not to mean what the language imports. The court holds that these words require the county, as a county, to have a pecuniary interest in the railroad, in order that the section may apply.

In answer to this it is only necessary to say no such words are to be found in section 1996 of the code.

126 This construction takes out the words "the citizens" and inserts the word "pecuniary," and thus it holds that the words, "any railroad in which the citizens of the county may have an interest," are to be construed as follows, to wit: "Any railroad

in which the county has a pecuniary interest." A mere statement of such a construction is enough to refute it. Here we may call attention to the language of article V, section 6, of the constitution of the State, when it was dealing with the question of the right of the State to issue railroad aid bonds. There it refers to a railroad "in which the State has a direct pecuniary interest." This section 1996 of the code was adopted about one year after article V, section 6 of the constitution. Doubtless, the legislators had before them this provision of the constitution, or at least were familiar with it. The difference in the language was obviously intentional and significant.

The history of the adoption of this provision of the State constitution as to State railroad aid bonds shows that it had a different purpose from that of the code (§§ 1996–2000).

The report of the treasurer shows that, prior to the meeting of the convention, the State had undertaken to issue its bonds in aid of certain railroads, and that under the statutes then existing the State was liable to be called upon for the issue of additional bonds, or for the guaranty and payment of additional bonds; and the State owned stocks in certain railroads, thus having a direct pecuniary interest in them. The amendment made to section 5, article V, of the constitution above quoted was designed to enable the State, without a vote of the people, to carry out its contracts already entered into on railroads, etc., already begun, and to protect its interest in the railroads, &c., already begun. With a vote of the people, the State was allowed to aid railroads without restriction. As the constitution, article VII, section 7, did not allow counties to incur any debt in any case (except for necessary expenses) without a vote of the people, the reason for the provision as to unfinished railroads in case of State aid did not apply to counties, and was purposely omitted in the act of April 10th, 1869 (now sections 1996–2000 of the code).

This view is supported by the following decision, rendered by the North Carolina supreme court, in 1869, the year following the constitutional convention.

127 In Galloway *vs.* Chatham Railroad Company, 63 N. C., 147, the suit was to enjoin an issue of State bonds in aid of the railroad company. The court held, that the bonds were unauthorized under the provisions of the constitution. In the course of the opinion (Pearson, C. J., writing the same), the court says, with respect to the restriction of the power of the State to incur debt, speaking of the debt existing at the time of the adoption of the constitution of 1868 (p. 153): "It will be found that most of the public debt was incurred in three modes: 1st, by subscribing for stock in railroad and navigation companies, and issuing bonds to pay for the stock, the State becoming a member of the corporation; this is the heavest item, and amounts to, say, eight million dollars; 2nd, by issuing bonds of the State, and exchanging such bonds for a like amount of the bonds of the corporation, the State not becoming a stockholder, and taking the collateral security of more or less value; this is the next heaviest item, and amounts to about three millions

of dollars; 3rd, by endorsing the bonds of corporations, and taking a mortgage or some other collateral security; this item amounts to two millions.

"These are the three modes by which, judging from the past, it was apprehended the public debt might be so run up as to ruin the credit of the State, and tarnish her honor and her reputation for good faith (p. 155). The suggestion that the credit of the State was given by this statute to aid in the completion of an unfinished railroad was not strongly urged on the argument, and, indeed, it could not be. An unfinished road is one that has been begun and partly worked on, and such a road is made an exception on the ground that it might be proper to finish it, in order to prevent a sacrifice of the work that had been done. There is no evidence that such was the fact in regard to this road. The other suggestion, that the State has a direct pecuniary interest in this road, was properly abandoned. The word "has" is in the present tense. The exception is obviously confined to roads in which the State had a direct pecuniary interest, at the time of the adoption of the constitution; otherwise the State might, by a subscription for stock, become directly interested in every railroad or navigation scheme that should thereafter be
128 projected, and thus the restrictions of the constitution would be of no effect whatever."

Note the difference of the language of the constitution as to State aid bonds, and the language of the code, as to county aid bonds. The constitution says, "has," and note the comments of the court on the present tense. The code says, "may have," &c., &c. The words used are different, and the purpose- are different.

Such of these decisions of the supreme court of North Carolina as were rendered after the bonds in question were issued are not binding upon this court, and it is both the right and duty of this court to construe this language of sections 1996–2000 according to their natural and proper meaning.

Within the meaning of section 1996 of the code, the citizens of a county have an interest in any railroad running into or through the county.

It is insisted by appellants, that there was a policy of the State of North Carolina, as evidenced in the constitution of the State adopted in 1868, against issuing railroad aid bonds, by either the State or counties, except in aid of roads which were unfinished at the time of the adoption of *of* the constitution. There was no such policy. The only policy was this—that no State bonds should be issued to aid any new railroads unless there should be a vote of the people, but, with such a vote, the State could aid any railroad, whether it had been begun or not at the time of the adoption of the constitution. If the railroad had been begun, and was unfinished at the time of the adoption of the constitution, State bonds might be issued in aid thereof without any vote of the people. As to counties, there was no distinction made as to whether the road was finished or unfinished at the time of the adoption of the constitution. A vote of the people of the county was required for the issuance of railroad aid bonds of a county in either case, whether a road had been be-

gun, or was a new railroad, and there was absolutely no distinction whatever made in the constitution between new roads and unfinished roads, so far as respects county aid, and no such distinction existed in the code, or in any other provisions of the statute.

The definition given the word "completion," as it appears
129 in section 1996, of the Code of North Carolina, by the supreme court in Commissioners *vs.* Snuggs, 121 N. C., 394, we think, with great respect, is too narrow, too refined.

The court says it is not used in the sections of the code suggested as synonymous with "construction," but the language here requires that there must have been an unfinished road.

The court went further, and, as I say, held that there must have been a road unfinished at the time of the adoption of the constitution of April 24th, 1868, in order that these sections of the code might have application. This interpretation of the word "completion" is not the correct one, as it seems to me.

It is used synonymous with "construction." This view is, we think, supported by the obvious difference between this language and the language used in the State constitution, as respects the issue of State railroad aid bonds. Article V, section 4, of the constitution prohibits the issue of State railroad bonds, "except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution. Section 1996 of the code, adopted April 10th, 1869, about one year after the framing of this provision of the State constitution, omits the significant words—namely, "unfinished at the time of the adoption of this constitution." "On no possible theory can these words be read into the statute. The legislature did not put them there, and the courts cannot put them there."

The legislature, as before said, with the constitution before it, wrote the act of April 10th, 1869, in the light of the words of the constitution, and if it was its purpose, in that enactment, to make both the same, the same words would have been used. Different words were used, as the purposes were different.

In this interpretation of the word "completion," it is well to observe the rule, as laid down by Justice Brewer, in Provident Trust Company *vs.* Mercer County, 170 U. S. R., 602. In that case, the justice says, the meaning of a word "is often qualified by the context." He illustrates this by a reference to what is said in Bunyan's Pilgrim's Progress: "As I walked through the wilderness of this world, I lighted on a certain place, where there was a den, and laid me down in that place, to sleep." The writer does not mean
130 that he passed from one end of the wilderness to the other, but, "simply, that, as he travelled in the wilderness, he lighted on the den." So we must look, at the context, in this interpretation.

In the foregoing I have kept in mind the rule laid down by Mr. Justice Gray, in Louisville Trust Co., 174, U. S. R., already quoted in this opinion, that, if under any circumstances the court can uphold bonds issued as the bonds in question were, it will do it.

To proceed further in the argument, already longer than intended, it is admitted that the board of commissioners of Stanly county was

proceeding under the provisions of sections 1996 and 1997, etc., of the code, as well as under the act of March, 1897.

If this be true, then the bonds are valid, notwithstanding the recitals, provided the code provisions conferred the power to issue them on the board.

Knox County *vs.* Ninth Nat. Bank, 147 U. S., 91. Cairo *vs.* Zane, 149 U. S., 122. Anderson &c. *vs.* Beal, 113 U. S., 227.

The defendants contend that these sections did not authorize the issue of the bonds, for the following reasons, also:

1. Because said statutes are not local and special, as required by sections 1, 6 and 7 of the constitution of North Carolina.

In this connection there is no evidence in the record that the payment of the interest or principal of these bonds will require a county tax to exceed the double of the State tax. And, further, under the decisions of the supreme court of North Carolina, this constitutional provision does not affect the validity of the bonds, and, in no view of the case, could affect more than the method of having a valid, existing and binding obligation paid.

"The legislative practice has uniformly been, as far as we know, to give approval in advance, and thus confer the requisite legal authority to levy special taxes beyond the assigned limits, though, if given after the levy, it would doubtless be equally effectual." (Cromartie *vs.* Commissioners, 87 N. C. R., p. 140.)

In Herring *vs.* Dixon, 122 N. C., on page 423, the supreme court again distinguishes between the power to confer a valid in-
131 debtedness without special legislative sanction, and the power to levy a tax to pay said indebtedness when it says: "In Vaughn *vs.* Commissioners, 117 N. C., 429, while it was held that the commissioners could incur a debt for necessary expenses without a vote of the people, it was not held that they could levy a tax in excess of the constitutional limit to pay it, without special approval of the legislature."

So, under the rulings of Cromartie *vs.* Commissioners and of Herring *vs.* Dixon, the commissioners have the right to contract a valid debt, without a special act.

Here the money is in the hands of the trustee of the complainants, and no levy of any tax is necessary or asked.

When a State law confers a general power on a county to subscribe to the stock of any railroad in the State for any amount, not exceeding $100,000, the county may subscribe to the stock of two railroads, $100,000 each.

Chicot County *vs.* Lewis, 103 U. S. R., 164.

In Davis *vs.* Huidekooper, 98 U. S., 104, the court upholds a subscription under a general statute of Missouri, almost identical in language with section 1996.

"Where an innocent purchaser buys bonds, negotiable securities, which recite that they were issued to fund a debt of the municipal corporation, the question of excessive indebtedness does not arise,

and the purchaser is not required to consider or inquire concerning it." Independent School Dist. *vs.* Rew, 111 Fed. Rep., page 1.

The supreme court of North Carolina, in a late case, City of Charlotte *vs.* Shepherd & Co., 122 N. C., 603, says that "where such a corporation," speaking of a municipal corporation, "has thus acquired the right to create a debt and issue the bonds, this power carries with it the power to levy the taxes necessary to pay said bonds and the accruing interest thereon." (Ralls *vs.* County Court, 105 U. S., 733; U. S. *vs.* New Orleans, 98 U. S. 381.)

This doctrine of the North Carolina court is supported fully by the two decisions cited above. The importance to all parties in interest, the amount involved, the care with which the case has been presented to the court by counsel, seemed to demand a full discussion of its principles, and on that account I have gone over the entire record and the briefs filed, giving to them the best considera-
132 tion in my power. The conclusion reached is that these bonds are valid bonds.

It follows that the decree entered in the circuit court in the Stanly case should be affirmed.

GOFF, circuit judge, dissenting:

I dissent from the opinion of the court, as well as from the judgment entered in this case.

133 Afterwards on another day, to wit: February 8, 1902, the court made and entered the following decree:

Decree.

Filed Feb. 8, 1902.

United States Circuit Court of Appeals, Fourth Circuit.

BOARD OF COMMISSIONERS OF STANLY COUNTY, N. C., *et al.*, Appellants,
vs.
W. N. COLER AND COMPANY, Appellee.
} No. 290.

Appeal from the circuit court of the United States for the western district of North Carolina.

This cause came on to be further heard on the transcript of the record from the circuit court of the United States for the western district of North Carolina and upon the petition for rehearing, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the rehearing applied for, be, and the same is hereby granted; and that the decree of this court entered on August 11, 1899, be, and the same is hereby set aside, and the mandate issued thereon be, and the same is hereby recalled; and

It is now here further ordered, adjudged, and decreed, by this

court that the decree of the said circuit court in this cause, be, and the same is hereby, affirmed with costs.

Feb. 8th, 1902.

NATHAN GOFF.

134 Afterwards on another day, to wit: February 19, 1902, the mandate of this court is by order of the court here stayed pending appellants' petition for a writ of certiorari.

Clerk's Certificate.

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein-entitled cause as the same remains upon the records and files of the said circuit court of appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the said United States circuit court of appeals for the fourth circuit, at Richmond this 20th day of February, A. D. 1902.

HENRY T. MELONEY,

Clerk U. S. Circuit Court of Appeals for the Fourth Circuit.

135 United States Circuit Court of Appeals, Fourth Circuit.

UNITED STATES OF AMERICA, } ss:
Fourth Circuit, }

I, Henry T. Meloney, clerk of the United States circuit — of appeals for the fourth circuit, do make return to the annexed writ of certiorari issued out of the Supreme Court of the United States in the cause therein entitled on the 21st day of May, 1902, by annexing hereto a certified copy of the stipulation of the attorneys of record, that the certified transcript of the record of said cause filed in the clerk's office of the Supreme Court with the petition for the said writ of certiorari may be received and considered as the transcript of the record on the return to said writ of certiorari.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals at Richmond, on this 29th day of May A. D. 1902.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th C't.

C. M. D.

136 File No. 18438.

In the Supreme Court of the United States.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. Snuggs, Treasurer of Stanly County, Petitioners,
vs.
W. N. COLER AND COMPANY. } No. 585.

Stipulation as to Transcript.

The Supreme Court of the United States, having on the 21st day of May, 1902, issued its writ of certiorari in the above-entitled cause:

It is hereby stipulated by the undersigned counsel for the petitioners and respondents, that the certified transcript of the record and proceedings in said cause, now on file in the Supreme Court of the United States, numbered 585 (file No. 18438), be taken and considered to be a return to the said writ.

CHAS. PRICE,
Solicitors for Complainants.
JAS. E. SHEPHEARD,
Of Counsel for Petitioners.

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the above is a true copy of the original stipulation of counsel filed and entered in the therein-entitled cause.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals, at Richmond, this 29th day of May, A. D. 1902.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Ct.

137 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fourth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer, are appellants, and W. N. Coler & Company are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the western district of North Carolina, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals
138 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of May, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

139 [Endorsed:] File No. 18,438. Supreme Court of the United States. No. 585, October term, 1901. The Board of Commissioners of Stanly County *et al. vs.* W. N. Coler & Company. Writ of certiorari. The execution of the within writ appears from the schedules thereunto annexed. Henry T. Meloney, cl'k U. S. cir. court of appeals 4th circuit.

140 [Endorsed:] File No. 18,438. Supreme Court U. S., October term, 1902. Term No. 264. The Board of Commissioners of Stanly Co. *et al.*, petitioners, *vs.* W. N. Coler & Company. Writ of certiorari and return. Filed June 3rd, 1902.

FILED
MAR 5 1902
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 525. 264

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND I. W. SNUGGS, COUNTY TREASURER OF STANLY COUNTY, PETITIONERS,

vs.

W. N. COLER AND COMPANY, RESPONDENTS.

Petition for Writ of Certiorari Requiring the Circuit Court of Appeals for the Fourth Circuit to Certify to the Supreme Court, for its Review and Determination, the Cause of the Board of Commissioners of Stanly County and I. W. Snuggs, County Treasurer, Appellants, vs. W. N. Coler and Company, Appellees.

A. C. AVERY,
JAMES E. SHEPHERD,
Attorneys and Counsel for Petitioners.

(18,438.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1902

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 585.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND I. W. SNUGGS, COUNTY TREASURER OF STANLY COUNTY, PETITIONERS,

vs.

W. N. COLER AND COMPANY, RESPONDENTS.

Petition for Writ of Certiorari Requiring the Circuit Court of Appeals for the Fourth Circuit to Certify to the Supreme Court, for its Review and Determination, the Cause of the Board of Commissioners of Stanly County and I. W. Snuggs, County Treasurer, vs. W. N. Coler and Company.

To the Honorable Supreme Court of the United States:

The petition of The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer of Stanly county, respectfully shows:

First. That your petitioners were the appellants and W. N. Coler and Company were appellees in a cause lately pending in the circuit court of appeals for the fourth circuit,

wherein an opinion was filed by said court—Judges Morris and Boyd concurring therein and Judge Goff dissenting—on the 4th day of February, A. D. 1902, in said court, and the decree affirming the judgment of the circuit court for the western district of North Carolina was entered in accordance with said opinion (a certified copy of said record being hereto attached), and that the said cause was held, upon petition to rehear, to await the decision of the Supreme Court of the United States in the cause of Commissioners of Wilkes County and J. H. Johnson, sheriff and *ex officio* treasurer of Wilkes county, appellants, *versus* W. N. Coler and Company, appellees, heard on certificate of the judges of the said circuit court for the fourth circuit at the last term of the Supreme Court. (See opinion, Supreme Court Reporter, volume 21, dated April 21, 1901.)

Second. That the said cause involves a controversy as to the validity of certain county bonds of the denomination of $1,000 each, and amounting in the aggregate face value to one hundred thousand dollars, issued by Stanly county, North Carolina, in the year 1890, and was begun by original bill filed by said W. N. Coler and Company in the circuit court of the western district of North Carolina, at Statesville, and that said circuit court, upon the hearing, entered a decree enjoining the said Board of Commissioners of Stanly County from in any manner interfering with the execution and performance of its decree, and declaring and adjudging that the said bonds are valid, and that I. W. Snuggs, county treasurer of said county of Stanly, was the lawful trustee of the holders of said bonds, and held the sum of six thousand dollars as such trustee, under and by virtue of the

law and orders of the Board of Commissioners of Stanly county, for the benefit of said bondholders and for the sole purpose of paying off and discharging the interest due on said bonds, which he had failed to do, and the said Board of Commissioners of Stanly County and I. W. Snuggs, treasurer, appealed to the circuit court of appeals for the fourth circuit, and, after hearing argument, the said circuit court of appeals, by an opinion delivered by Judge Goff, and in which all the judges concurred, reversed the judgment of said circuit court for the western district of North Carolina and adjudged and declared that the said bonds issued by Stanly county were invalid (see 96 Fed. Reporter, page 284); but that upon the rehearing of the cause upon petition, as aforesaid, the said circuit court of appeals for the fourth circuit, by an opinion and judgment rendered by Judge Morris—Judge Boyd concurring and Judge Goff dissenting—on the fourth day of February, A. D. 1902, overruled the former decision of said circuit court of appeals and affirmed the decision below of said circuit court for the western district of North Carolina, and that your petitioners are advised that so soon as the mandate of the said circuit court of appeals for the fourth circuit shall be sent down in pursuance of said decree, entered in said court in conformity to said opinion, the said circuit court can and will proceed to enforce its said judgment (see copy of decree of said circuit court in the record), since said decree has been affirmed by said circuit court of appeals.

Third. That, as appears from said record (a copy of which is filed herewith), on the 18th day of May, A. D. 1897, an action was instituted in the superior court of Stanly

county by the Board of Commissioners of Stanly County and James P. Nash and G. R. McCain against I. W. Snuggs, treasurer of Stanly county, and that upon the hearing in said superior court of Stanly county it was ordered and adjudged by the court, as also appears in the record, that the said I. W. Snuggs was enjoined and restrained from paying any money in his hands, or that might thereafter come into his hands, as treasurer of Stanly county, in satisfaction of the interest on said bonds, or from making any disposition whatever of such moneys until the final hearing (see order of Judge Coble in the attached record), and that on appeal by said defendant, Snuggs, to the supreme court of the State of North Carolina, the said supreme court affirmed the judgment of said superior court. (See Commissioners of Stanly County *vs.* Snuggs, 121 N. C., 394.)

Fourth. That by reason of the conflict between the said decision of the circuit court of appeals for the fourth circuit and the decision of the supreme court of the State of North Carolina, rendered in the case of The Board of Commissioners of Stanly County *et al. vs.* Snuggs, 121 N. C., 394, wherein it was held by said supreme court that the said bonds issued by Stanly county were invalid, it has become necessary for the Supreme Court of the United States to determine and declare, upon reviewing the said decision of the circuit court of appeals rendered on February 4, A. D. 1902, whether the said decision of the circuit court of appeals for the fourth circuit, and the decree in accordance with said decision, should be affirmed, or whether said circuit court of appeals erred in failing to follow the decision of the supreme court of North Carolina in declaring said bonds invalid

under the construction given by said supreme court to the constitution of said State and its statutes pertaining to the validity of said bonds, and that the necessity for reviewing said conflicting decisions grows out of the fact (Forsyth *vs.* Hammond, 166 U. S., 506, 514, 515) that so soon as the said circuit court of appeals shall send down its mandate (which is now withheld to await this application) the circuit court for the western district of North Carolina will, upon motion of the appellees, the plaintiffs in said suit below, order your petitioner, I. W. Snuggs, treasurer of Stanly county, to pay over to a receiver, or to the holders of said bonds, any moneys in his hands collected as a levy of special tax to pay the interest on said bonds issued by Stanly county, as aforesaid, and any moneys which may hereafter come into his hands collected under any such levy of special tax, and will order your petitioner, The Board of Commissioners of Stanly County, to levy a tax sufficient to pay any interest due on said bonds over and above such amount as may be in the hands of a receiver or of said treasurer, your petitioner, and collected under a levy of taxes made to meet interest on said bonds, whereas the supreme court of North Carolina have affirmed the judgment of Coble, judge of superior court of North Carolina (as appears in the attached record), enjoining and restraining the treasurer of Stanly county, your petitioner, from paying any money now in his hands or that may hereafter come into his hands to any holders of the coupons on said bonds, so that your petitioners would be subject to attachment for contempt by the said circuit court if they should refuse to pay or permit the payment of interest on said bonds, and by the superior court of said State if any special tax fund already collected or hereafter collected

by order of said board of commissioners as a special tax should be applied to the payment of interest on said bonds, but for the fact that the State court may yield to the mandate of said circuit court as issued under the supreme law of the land.

Fifth. That prior to the publication of said decision, on the 4th day of February, A. D. 1902, the said circuit court of appeals had, as aforesaid, delivered an opinion, in which all the members of the court had concurred (see The Board of Commissioners of Stanly Co. *et al.*, appellants, *vs.* W. N. Coler and Company, appellees, 96 Fed. Rep., 284), and had held and decided that sections 1996 to 2000 of the Code of North Carolina did not authorize the issuing of the said bonds by Stanly county, following the construction of said sections given by the supreme court of North Carolina in said action of Commissioners *vs.* Snuggs, 121 N. C., 394, that the said sections of the code did not empower the county of Stanly to issue said bonds in payment of subscription to a railroad company which built a road through a portion of said county, but that the same question having arisen in said circuit court of appeals as to the authority of Wilkes county, North Carolina, under said sections of the code to issue its bonds in payment of its subscription to the capital stock of a railroad company which built a railroad through a portion of Wilkes county, a petition to rehear was filed after the rendition of said decision in said circuit court of appeals, and thereupon the mandate was stayed and the cause was held to await the decision by this honorable court as to the validity of said Wilkes county bonds; that this honorable court declined to decide the question whether the said

sections 1996 to 2000 of the Code of North Carolina empowered either the county of Wilkes or Stanly county to issue bonds, and left the said question open because it was not within the purview of the instruction asked by said circuit court of appeals.

Sixth. That your petitioners therefore respectfully submit that under the rule laid down in Forsyth *vs.* Hammond, *supra*, already referred to, and in the exercise of its plenary power, this court should authoritatively determine and settle the question which has given rise to an unseemly conflict between the courts of the United States of America and the supreme court of North Carolina, and that the facts that the said circuit court of appeals, by the unanimous opinion of the judges upon the first hearing, decided to follow the construction given by the supreme court of North Carolina to sections 1996 to 2000 of the Code of North Carolina, and, upon a rehearing, decided by a bare majority of a court differently constituted to overrule the former decision of said circuit court of appeals, is also worthy of consideration by this honorable court as a reason for exercising its plenary power by reviewing the said decision rendered on the 4th day of February, 1902, which, as aforesaid, held the said bonds valid upon the ground that the supreme court of North Carolina had erred in construing its own statutes.

Wherefore your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States circuit court of appeals of the fourth circuit, commanding said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all

proceedings of said circuit court of appeals in said case therein, entitled The Board of Commissioners of Stanly County and I. W. Snuggs, county treasurer, appellants, *versus* W. N. Coler and Company, appellees, No. 290, to the end that the said cause may be reviewed and determined by this court, as provided in section 6 of the act of Congress entitled "An act to establish circuit courts of appeals and to define and to regulate, in certain cases, the jurisdictions of the courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioners may have such other or further relief or remedy in the premises as to the court may seem appropriate and in conformity with said act and with the recognized principles of law applicable to the matter set forth in the petition, and that the said judgment of the said circuit court of appeals in the said cause and every part thereof be reviewed by this honorable court.

And your petitioners will ever pray.

THE BOARD OF COMMISSIONERS OF
STANLY COUNTY AND
I. W. SNUGGS, *County Treasurer*,
By A. C. AVERY,
Attorney and Counsel for Petitioners.

J. E. SHEPPERD AND
A. C. AVERY,
Of Counsel for Petitioners.

DISTRICT OF COLUMBIA, }
City of Washington. }

Alphonso C. Avery, being duly sworn, says that he is one of the attorneys and counsel for the Board of Commissioners of Stanly County and I. W. Snuggs, treasurer, petitioners above named, and as such has signed the foregoing petition, and as such has had personal charge for them of the suit in equity brought by W. N. Coler and Company in the circuit court for the western district of North Carolina against your said petitioners, while pending in said circuit court, and of the appeal of your petitioners to the circuit court of appeals, from the institution of said suit to the present time, and also appeared in the superior court of Stanly county in the action therein entitled The Board of Commissioners of Stanly County *et al. vs.* I. W. Snuggs, and also when said action was heard upon appeal of I. W. Snuggs in the supreme court of North Carolina, and having more perfect and accurate knowledge of the facts alleged in the petition than the petitioners themselves, and therefore has signed the names of the said petitioners and verifies the same for them; and that the facts therein stated are true, to his best information and belief.

ALPHONSO C. AVERY.

Sworn to and subscribed before me this the 5th day of March, A. D. 1902.

In witness whereof I have hereunto signed my name and affixed the seal of my office.

[SEAL.] JOHN J. WILMARTH,
Notary Public, District of Columbia.

PETITIONER'S BRIEF

Office Supreme Court U. S.
FILED
MAY 5 1902
JAMES H. McKENNEY,
Clerk

No. 585.

Bf. of Shepherd, Avery & C.
for Petitioner

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

Filed May 5, 1902.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND I. W. SNUGGS, COUNTY TREASURER OF STANLY COUNTY, PETITIONERS,

vs.

W. N. COLER & COMPANY, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI.

BRIEF FOR PETITIONERS.

JAMES E. SHEPHERD, A. C. AVERY AND C. M. BUSBEE
ATTORNEYS AND COUNSEL FOR PETITIONERS.

FILED ....., A. D. 1902.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 585.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND I. W. SNUGGS, COUNTY TREASURER OF STANLY COUNTY, PETITIONERS,

versus

W. N. COLER & COMPANY, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI.

BRIEF FOR PETITIONERS.

JAMES E. SHEPHERD, A. C. AVERY AND C. M. BUSBEE
COUNSEL FOR PETITIONERS.

FILED ....., 1902.

This case belongs to one of the classes in which the Court has announced that it will exercise its Plenary Power by granting a Writ of Certiorari to the Circuit Courts of Appeal.

"We reaffirm in this case the propositions heretofore announced, to-wit, that the power of this Court in *certiorari* extends to every case pending in the Circuit Courts of Appeal, and may be exercised at any time during such pendency, provided the case is one which, but for this provision of the statute, would be finally determined in that Court. And further, that while this power is coextensive with all possible necessities and sufficient to secure this Court a final control over the litigation in all the Courts of appeal, it is a power which will be sparingly

exercised, and *only when the circumstances of the case satisfy us that the importance of the question involved the necessity of avoiding conflict between two or more Courts of appeal, or between Courts of appeal and the Courts of a State, or some matter affecting the interest of this Nation in its internal or external relations, demands such exercise.*

"Among the considerations thus suggested are those which *indicate why, in this case, the Court properly exercised its power and issued the writ of certiorari. There was a conflict between the decision of the Circuit Court of Appeals for the Seventh Circuit and the Supreme Court of the State of Indiana.* The latter Court had declared that the proceedings by which the contiguous territory was annexed to the city of Hammond were legal, and, therefore, that that territory was to be considered by all the officers of the State of Indiana as within the territorial limits of the city. The United States Circuit Court of Appeals, by its decision in this case, had declared that such annexation proceedings were invalid, and that the property of the petitioner was not within the city limits. This tract of plaintiff's was not on the extreme limit of lands sought to be incorporated into the city, and if the decision of the Circuit Court of Appeals was enforced, there would be a tract of a few hundred acres within the exterior boundaries of the city of Hammond, as defined by the judgment of the Supreme Court of the State, withdrawn from the city jurisdiction, and, in fact, excepted from its territorial limits. *All the unfortunate possibilities of conflict and collision which might arise from these adverse decisions were suggested when this application for certiorari was made, and, although no final decree had been entered, it seemed to us a duty to bring the case and question here for examination at the earliest possible moment."*

Forsyth v. Hammond, 166 W. S., 506, 514, 515.

It will be seen by reference to pages 25 and 29 of the printed record, that the judgment affirmed by the Supreme Court of North Carolina in Commissioners v. Snuggs, 121 N. C., 394, is in conflict with the judgment of the Circuit Court for the

Western District of North Carolina, affirmed by the decision of the Circuit Court of Appeals for the Fourth Circuit, at Richmond, February 4, 1902 (see printed record, page 62).

Petitioners are advised that it is sufficient, upon the hearing of the preliminary motion, to show that the case referred to in the petition belongs to a class in which the Court has declared its purpose to exercise its plenary power, by reviewing the conflicting decisions, and determining what is the law.

The two Courts whose differences have given rise to this conflict being Courts of last resort, whose decisions, as a rule, must be followed, the petitioners take it for granted that so grave a question will not be considered by the Court, which is the final arbiter, without a full discussion upon the merits, after settling the preliminary motion. They will, therefore, submit a short brief to show that the issues of law raised have, at every stage of their consideration in different Courts, and upon every question involved, given rise to conflicts of opinion between learned and distinguished jurists, and that these differences, according to the settled practice of the Court, will be reviewed only after hearing the counsel for both parties and after due deliberation.

The History of These Conflicts of Opinion and Judgment.

FIRST. The bonds were declared invalid, and the authority of The Code, sections 1996 to 2000, was declared by the Supreme Court of North Carolina insufficient to authorize their issue (but one Justice dissenting), in Commissioners v. Snuggs, 121 N. C., 394.

SECOND. The Circuit Court of Appeals reviewed the opinion of the Circuit Court of the Western District of North Carolina, declaring the bonds valid, and all of the Judges, Goff, Morris and Brawley concurring, reversed the ruling of the Circuit Court and followed that of the Supreme Court of North Carolina.

Commissioners v. Coler, 96 Fed. Rep., 284 (see opinion of the Court, by Judge Goff, page 65 of printed record).

THIRD. Upon petition to rehear filed in the Court of Appeals, the mandate was stayed and the cause was held to await the decision of the Supreme Court in the hearing on certificate of Wilkes County v. Coler, 180 U. S., 506—524, but the Court declined to pass upon the question whether Wilkes County (or Stanly County), was empowered by sections 1996 to 2000 of The Code of North Carolina to issue bonds in aid of railroads extending through their counties.

FOURTH. After it had been held to be the duty of the Circuit Court of Appeals to follow the construction given to Section 14, Article II, of the Constitution by the State Court, the only remaining question is whether the Federal Courts should follow the construction given by the State tribunal to said sections of The Code.

FIFTH. A bare majority, composed of Judges Morris and Boyd, decided to overrule the former decision of the Court of Appeals, while Judge Goff dissented. (See opinion in the printed record, from pages 81 to 102.)

SIXTH. NOT ONLY IS THERE A CONFLICT OF OPINION, BUT THERE IS A CONFLICT OF JUDGMENT, the State Court enjoining the further collection of taxes and the payment of some $6,000 now in the hands of Snuggs, the Treasurer, and the Federal Court declaring the bonds valid and DIRECTING THE SAID TREASURER TO PAY THE SAID SIX THOUSAND DOLLARS TO A RECEIVER FOR THE USE OF THE BONDHOLDERS (pages 25, 29, 62 of printed record).

The established rule of the Federal Courts is to resolve all reasonable doubts in favor of the construction placed by the State tribunals upon their own statutes.

The construction by the Courts of a State of its Constitution and statutes is, as a general rule, binding on the Federal Courts. We may think that the Supreme Court of a State has misconstrued its Constitution or its statutes, but we are not at liberty to, therefore, set aside its judgments. That Court is the final arbiter as to such questions. In Claiborne County v. Brooks, 111 U. S., 400, 410 (28, 470, 474), it was said: "It is un-

doubtedly a question of local policy with each State, what shall be the extent and character of the powers which its various political and municipal organizations shall possess; and the settled decisions of its highest Courts on this subject will be regarded as authoritative by the Courts of the United States; for it is a question that relates to the internal constitution of the body politic of the State." See also Burgess v. Seligman, 107 U. S., 20, 33 (27: 359, 365); Bucher v. Cheshire R. Co., 125 U. S., 555 (31: 795); Detroit v. Osborne, 135 U. S., 492 (34: 260); South Branch Lumber Co. v. Ott, 142 U. S., 622 (35: 1136); Kaukauna Waterpower Co. v. Green Bay and M. Canal Co., 142 U. S., 254 (35: 1004); McElvaine v. Brush, 142 U. S., 155 (35: 971); Stutsman County v. Wallace, 142 U. S., 293 (35: 1018), quoting Norton v. Shelby County, 118 U. S. 425 (30: 178), and Grumley v. Clark, 134 U. S., 338 (33: 909); Morley v. Lake Shore and M. S. R. Co., 146 U. S., 162 (36: 925); Bauserman v. Blunt, 147 U. S., 647 (37: 316); May v. Tenney, 148 U. S., 60 (37: 368); Baltimore and O. R. R. Co. v. Baugh, 149 U. S., 368, 373 (37: 772, 776); Lewis v. Monson, 151 U. S., 545 (38: 265); Balkam v. Woodstock Iron Co., 154 U. S., 177 (38: 953), quoting Leffingwell v. Warren, 67 U. S., 2 Black., 599, 603 (17: 261, 262).

When it is found that no construction had been given to a statute by the State Court, when the transaction was entered into, the "Federal Courts will lean toward an agreement of views with the State Courts, if the question seems to them balanced with doubt."

Burgess v. Seligman, 107 U. S., 20, 33.

It is true that all Courts incline to hold commercial paper, in the hands of innocent purchasers for value, valid, but nowhere, except in the concurring opinion of Judge Boyd and in the brief of Mr. Price, have we found an intimation that, in order to uphold municipal bonds, "if it can do so under any circumstances," or "if it is possible to do so," a Federal Court must lean against instead of in favor of a ruling by a State tribunal, that the creation of a debt by a municipality was *ultra vires*.

Justice Gray, in Louisville R. Co. v. Louisville Trust Co., 174 U. S., 573, 574, said, quoting 10 Wall., 604:

"Where a party deals with a corporation in good faith—*the transaction is not ultra vires*—and he is *unaware of any defect in authority*, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists."

The contention of Petitioners is that the authority to subscribe was limited to a certain class of counties. If a county was not a donee of such power, by reason of belonging to such class, it could not confer such authority on itself by recitations, either in bonds or in the minutes of its governing officials.

If the Legislature had not intended to restrict the power of "the Boards of Commissioners of the several counties" to aid railroads to those in which the citizens of the county may have an interest, "it would have omitted the qualifying clause, and have allowed any county to subscribe stock to any railroad company or companies."

If the clause descriptive of the company to which the subscription might be made is not meaningless and mere surplusage, it confers power only on a certain class of counties. *If a county not authorized attempts to subscribe, it is acting ultra vires.* Whether there is anything in the transaction to excite suspicion or not, a purchaser is bound to look to the power of a municipality to issue bonds and must lose when the bonds are issued without legislative authority. This proposition, of course, does not require the citation of authority.

The language of Code, section 1996, relied upon as authority for the issue of the bonds, is as follows: *"The Boards of Commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens may have an interest."*

What is meant by the words, "any railroad in which the citizens of a county may have an interest?" The petitioners submit that the Courts of America and the British Empire have uniformly construed the word "interest" in such connection to mean "pecuniary interest" in the thing referred to, here in the railroad.

Definition of the words, "Interest" or "Interested."

In construing a statute prohibiting any member of a counsel from having a direct or indirect interest in a contract of the corporation, the Supreme Court of Michigan, in Swedly v. Kirby, 79 N. W. R., 188, said: "This indicates that a pecuniary interest was intended. Anderson defines interest as such relation to the matter in issue as creates a liability to pecuniary loss or gain from the event of a suit."

Taylor v. Highway Commissioners, 88 Ill., 527.
Northampton v. Smith, 11 Met. (Mass.), 395.

In a case where the question was whether a salaried employee of a firm of contractors was interested in the contracts of the firm, the Pennsylvania Court said: "The word interested does not mean anything but pecuniary interest, and of this there is no evidence."

Dunlap v. Philadelphia, 13 W. N. C. (Pa.), 98.

The Supreme Court of Illinois, in passing upon the question whether the State had an interest, within the meaning of a statute, in a *quo warranto* proceeding to try title to an office, said: "The interest which a State must have in such a cause is *a substantial interest, as a pecuniary interest.*"

McGrath v. People, 100 Ill., 464.

In State v. R. Co., 36 N. J. L., 164, the Court, drawing the distinction between estates and interests in a statute providing for condemnation of right-of-way, said: "Under the more comprehensive term, 'persons interested,' are included, not only persons in whom is vested the legal title which the company pro-

poses to acquire, * * * but also other individuals having some independent right or interest therein, * * * such as an easement of a right-of-way, inchoate rights of dower or curtesy, or incumbrances, such as by judgments or mortgages, which are charges on the legal estate. The object is * * * that their *interest* may be extinguished by payment."

The Supreme Court of California, construing a statute allowing a party *"beneficially interested"* a writ of review of an order of the Board of Supervisors granting a right to use a highway for the purpose of constructing a railroad, held that an affidavit alleging that "affiant, in common with others living along the highway, would be damaged," was insufficient, and said: "It does not appear by the petition in this case that *the petitioner has any other or greater right in the highway mentioned therein than any other citizen of the State.* * * * In an application made by a private party, *his interest must be of a nature distinguishable from that of the mass of the community.*"

Linden v. Almeda County, 45 Cal., 7.
Ashe v. Calusa County, 71 Cal., 236.

If a person living on a highway has *"no other or greater interest therein than any other citizen of the State," then a person living on or in the vicinity of an improved highway—a railroad—has no other or greater interest in the railroad* than any other citizen of the State, and the citizens of Stanly County, whether they live along or away from the line of railway, *"have no other or further interest therein than any other citizen of the State."*

THE LEGISLATURE OF NORTH CAROLINA INTENDED TO EMPOWER ONLY THOSE COUNTIES WHICH HAD ALREADY INVESTED IN THE STOCK OF A RAILROAD COMPANY, BUT HAD NOT THEREBY EFFECTED THE COMPLETION OF THE LINE, TO MAKE AN ADDITIONAL SUBSCRIPTION TO THE STOCK.

FIRST. Because any other construction would have allowed a subscription to be made by any county in the State,

because the citizens of Stanly County, by reason of vicinage, had *no other or greater interest "in the railroad than any other citizen of the State."*

SECOND. According to all rules of construction, it must be assumed that the Legislature intended to describe a class of counties and limit the power to them.

THIRD. Because it is an historical fact, alluded to in Galloway v. Chatham, 63 N. C., 147, that counties as well as the State had been lending their credit and subscribing to the stock of railroad companies, and that Sec. 14, Art. II, and Sec. 7, Art. VII, of the Constitution of 1868, had been inserted in that instrument to restrain counties from reckless expenditures of this kind, just as Sec. 4, Art. VI, had been framed as a check upon extravagant legislation by the State (see 63 N. C., page 147).

FOURTH. Because sections 1996 to 2000 of The Code were first enacted by the reconstruction Legislature of 1868, which attempted to shape the statutory law so as to bring it into harmony with the Constitution, and it is in harmony with the general policy of the State to construe the restrictive clause of section 1996 as confining the authority to subscribe to counties already interested pecuniarily in the railroad to which they propose to subscribe, just as the Legislature, in order to protect investments already made by the State, was empowered to subscribe to railroads in which the State had already made investments.

FIFTH. Because section 3766 of The Code (enacted in 1868) provides that where statutes are re-enacted, "the portions not altered are to be considered as having been the law since their enactment; and at the time of their enactment." As is shown by the judicial history of the State, many counties, like Rutherford, had issued bonds in payment of subscriptions to the stock of railroad companies before the railroad was built across their borders (Hendricks v. Railroad, 101 N. C., 617), and it was the interest of such counties, as it was the policy of the State, to have power to protect such investments.

Additional Authorities Construing "Interest" as Meaning a

Pecuniary, Valuable or Beneficial Interest, Not Merely a Patriotic or Sentimental Interest, Which a Citizen of a State or County Feels in a Public Improvement.

As shareholders, by reason of a subscription already made, the citizens of the county would have had an interest in any contract from which, as shareholders, they might derive profit, as by making an incomplete road more valuable by extension.

Todd v. Robinson, Q. B. D., 739.
Hunnings v. Williamson, 112 Q. B. D., 536.

"Beneficial Interest" was Construed to Mean Present, Vested or Valuable Interest by the Supreme Court of Massachusetts.

Dexter v. Cotting, 149 Mass., 92.

Interest in an Estate or Action, where Requisite to Give a Person Standing in Court as a Party to an Action, Universally Construed to be a Beneficial, Valuable, Vested or Pecuniary Interest.

Bachman v. Packard, Q. Fed. Cas., No. 709.
Northampton v. Smith, 11 Met. (Mass.), 395.
Goodall v. Tuttle, 10 Fed. Cas., No. 5533.
Whitney v. Brittain, 16 N. Y. App. Div., 457.
Hovin v. Valcano, etc., Co., 13 Ca., 62.
Bugher v. Gott, 3 N. Y. Supp., 518.
Whitney v. Barley, Q. B. D., 154.
Burgess v. Clark, 14 Q. B. D., 735.
Gasquet v. Johnson, 1 La., 431.

The Interest Which Disqualifies a Judge from Sitting, is Held to be "a Property Interest" in the Action and its Results, Not "The Interest Which he May Have in Common with Other Citizens in a Public Matter."

Sauls v. Freeman, 24 Fla., 209.
Chicago, etc., R. Co., v. Kellogg.

The foregoing list of authorities might be enlarged by adding scores of cases in which the word interest is interpreted in the

same way; but it is not deemed necessary to cite any but the following:

Taylor v. Norment, 88 Ill., 327.
Wilson v. Railroad, 67 Ala., 358, 360.
In Real Estate of White, 37 Cal., 100.
Shelton v. Derby, 27 Conn., 415, 421, 425.
Smith v. Phillips, 62 Ala., 578.

"Interest," defined in dictionaries, where it relates to property such as railroads, is generally a legal concern of a person in a thing, or in the conduct of another person, whether it consist in the right of enjoyment of or benefit from property, or right to claim an advantage, or be subjected to liability on account of the conduct or management of property.

In other words, an interest is either a legal right in a thing, as property, or such a relation to it as to enable one to participate in the profits of its conduct or management, or share in the loss arising from its management.

One of the definitions given by the Standard Dictionary of *"interested"* is *"being a part-owner; as one interested in railroad shares."*

It is contended for the petitioners that the citizens of a county, collectively, could only be interested, in the ordinary and obvious meaning of the word as applied to railroads, where the corporation, which embodied all rights of the citizens as a body, has some interest in shares of its stock. This definition is in harmony with the contention of the petitioners that the last clause of section 1996 is surplusage, unless it restricts the power to subscribe to roads in which the county may already own shares of stock.

The definitions of lexicons and law-books uniformly define an interest in any kind of property in the same way. If the word has no technical meaning, then it must be interpreted according to its ordinary meaning. If the Courts have given it a technical meaning, that must be adopted.

Adams v. Turrentine, 30 N. C., 147.
Blue v. McDuffie, 44 N. C., 13.
Randall v. Railroad, 107 N. C., 748, 750.

Whatever rule of construction may be followed the interpretation must be the same, and, seeing this, on the first hearing, Judge Goff incorporated into the opinion the entire discussion of this point by the Supreme Court of North Carolina in Commissioners v. Snuggs, expressing briefly the approval of the Court.

On the other hand, in the opinion delivered on February 4, 1902 (printed record, page 81), the Court assumes that the Legislature did not mean "interest" in the sense of "pecuniary interest," because the qualifying word was inserted in the Constitution, but was omitted from the statute. The Court said the words "in which a citizen of a county may have an interest," would seem to be the appropriate words to express the general interest which the whole body of the people of a county have in a railroad which they believe will benefit them, as distinguished from the direct pecuniary interest of the county as a corporation."

This opinion is remarkable, in that it disposes of the ruling of a State Court with so little ceremony, and in that in overruling the construction given by that Court to its own statute, it substituted its own interpretation, without citing an authority, lexicon or law-book to sustain its view. Indeed, no reason is given for rejecting the definition of the Court, though it would seem that the consensus of opinion in all Courts has been that when applied to property an interest means a pecuniary interest.

Was it not most reasonable that the Supreme Court of North Carolina should adopt the definition given both by law-books and dictionaries, and should have added that such an interpretation of a statute enacted by the reconstruction Legislature was in harmony with the policy of the reconstruction Constitution? Of this, that Court, having knowledge of the peculiar conditions in the State and its policies as indicated by its various laws and their interpretation, was certainly more competent to judge.

Judge Boyd, in the concurring opinion, declares it to be both the right and duty of the Court of Appeals to "construe the language of sections 1996-2000 according to their natural and proper meaning"; but he fails to refer to law-book or lexicons

from which the Court gathered the "natural and proper meaning."

We challenge the respondents to produce authority of Courts or scholars for such a definition of interest as applied to a railroad.

The statute requires the subscription must be "necessary to aid in the completion of any railroad," etc.

The petitioners respectfully insist that the word "COMPLETION" has also a most material bearing upon the question of legislative authority, that is, in indicating the *class of counties* to which the act refers.

Judge Goff, in delivering the unanimous opinion of the Circuit Court of Appeals (page 69 of printed record), quotes with entire approbation the following from the opinion of the Supreme Court of North Carolina:

> "But did the sections above mentioned give additional and complete authorty to order the election, issue the bonds and levy the taxes to pay them, principal and interest? Section 1996 is in these words: 'The Boards of Commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad, in which the citizens of the county may have an interest.' It will be necessary, in order that that section may be construed to give authority to the Commissioners to issue the bonds, that the language should include a railroad not begun to be built before the Constitution was adopted; that the word 'completion' should be construed 'building' or 'construction,' extending even to the building of a new road; for, in the case before us, it appears that the road had not begun to be built. We can not see why the word 'completion' should be thought to have been used by the legislators in any other sense than the one most usual and natural. Ordinarily the words 'to complete' are understood to mean 'to finish,' 'to 'fulfill,' and the word 'completion' to mean the 'finishing' or 'accomplishing in full' of something which has already been commenced; as, for instance, it is most frequent to hear the word 'completion' used in

> connection with the finishing years and months of the education of the young. * * * The object of the statute must have been to provide, by general act, means by which the counties, without special legislation for each county by separate bills, might be enabled to complete unfinished railroads in which the counties had a pecuniary interest. At the time of the enactment of the statute of 1868-'69, and always since that time, any county of the State, duly observing the limitations of Section 7 of Article VII of the Constitution, and under an act passed according to the requirements of Sec. 14, Art. II, of the Constitution, could, and can, subscribe to the capital stock of a railroad company, whether unfinished or to be begun. The act of 1868-'69, however, considering the conditon of affairs then existing—that is, that there were counties which had a pecuniary interest in the railroads that had been begun, but were unfinished—enabled such counties to make subscriptions of bonds to complete such unfinished roads at the earliest moment and with the least cost, by a general law passed according to section 14, Article II, of the Constitution."

The learned Judge then cited several other cases from North Carolina, in which the said statute was likewise construed, and remarked: "With these decisions of the Supreme Court of North Carolina, we are in full accord."

We have already discussed the meaning of the word "interest" in the said statute, and will now add a few words in addition to the opinion as to the word "completion." We are told in one of the opinions reversing the former holding of the Circuit Court of Appeals, that "completion" may probably mean "the completion of the raising of money necessary to build the road." And this in view of the historical conditions set forth in the opinion of the Supreme Court of North Carolina, and the legislation dealing with those conditions, and the judicially declared policy of the State in reference to those conditions as reflected by such and other legislation. All of these considerations, involving the legislative and judicial history of a State incident to the peculiar and abnormal conditions resulting from a great civil war, and which the State judiciary could best un-

derstand, and did understand, are thus summarily disposed of by a bare majority, reversing several decisions of the Supreme Court of North Carolina and the unanimous decision of the Circuit Court of Appeals.

Again, in the concurring opinion (page 100 of the record), we are told that the meaning of the word as understood and declared by all of these other Judges "is too narrow, too refined," that "it is used synonymous with 'construction,'" and that it is not the "ordinary meaning," or the "natural meaning," of the language. No authority is referred to except the remarks of Justice Brewer in Provident Trust Co. v. Mercer Co., 170 U. S., 602, in which he very aptly and elegantly illustrates the general proposition that the meaning of a word "is often qualified by the context."

There is nothing in this statute which at all qualifies the ordinary meaning of this word, but there is everything, in view of the dealing of the State with unfinished railroads at the time of its original enactment, to confine it precisely to *its "natural" and well-known meaning.*

The following definitions are referred to:

COMPLETE: (*v. t.*) finish; perfect; fill up or out; *to add or supply what is lacking to;* as to: complete a house or task; to *complete* an *unfinished* design; to complete another's thought.

COMPLETION: (*n*) the act of completing; a *filling out;* as: the completion of a building; the completion of one's *education.* —*Century Dictionary.*

"*Other* larger views than seem necessary to the completion of the argument."—*Bishop Hurd's Sermon.*

"A *slow developed* strength awaits
Completion in a painful school."
—Tennyson's Love Thou Thy Land.

Roget's Thesaurus of English Works and Phrases, treating this word (completion) under the caption of "*Results* of Voluntary Action," thus defines it:

"Section 729--COMPLETION: Consummation; culmination; *final, last*, crowning, *finishing* touch or stroke; coup de grace; crowning of the edifice; fait accompli; *elaboration*.

"COMPLETE is to make complete. We *complete* what *is undertaken by continuing* to labor at it; to finish what is *begun* (in a state of forwardness) by putting the last hand to it. * * * The characteristic idea of *completing* is the conducting of a thing to its final period."

To the same effect is Soule's synonyms, which also define the word "CONSTRUCT" as follows:

(1) Fabricate, build, erect, raise, set up, put together.

(2) Organize, institute, originate, invent, arrange, make, form, frame.

It is submitted that this can not be "synonymous" with "completion," as suggested in the opinion.

Again, it is a well-settled principle that Courts must give effect to every part of a statute. Now, if this be so, how is it possible to reject the meaning that has been given to the words "interest" and "completion" by the Supreme Court of the State and the Circuit Court of Appeals in the opinion delivered by Judge Goff? These words are really the *essence* of the statute: otherwise all counties whose citizens happen to desire a railroad can subscribe to one simply upon the acquisition of a charter; and this, too, even though the road may be in a distant county. The persons concerned in having these bonds issued did not themselves believe in any such interpretation of the law, as they applied to the Legislature for a special act to give the county such authority. It has ever been, and is now well understood in North Carolina, that in order to authorize a subscription to a railroad, *a special act of the Legislature must be obtained*. No one has ever relied upon section 1996 as conferring such authority upon a road whose construction has never been commenced. Indeed, it is doubtful whether *any* subscriptions whatever have *ever* been made under the said act.

UNDER THE ABOVE CONSTRUCTION, THE BONDS ARE INVALID EVEN HAD THE COURT DECIDED THAT THE ACT WAS NOT CONFINED TO ROADS COMMENCED BEFORE 1868, THE DATE OF ITS PASSAGE, as it is admitted, and it appears from the order of the Board of Commissioners *referred to in the recital,* that the construction of the road had *not been commenced* (pages 19, 20 of printed record); and it also appears as a fact in the case that the county had no pecuniary interest whatever in the said road.

But we insist that the construction of the Court that the act referred only to roads commenced and unfinished in 1868, is correct, and is fully sustained by the opinions of the Supreme Court of the State and Circuit Court of Appeals. As we have said, it has never been invoked in aid of any road commenced after that date, if, indeed, it has ever in any case been relied upon. Again, the recital refers to the act amendatory of the charter, which shows that the *charter* was not granted until 1870.

In view of the lack of authority to support a construction which practically nullifies a statute, it is not surprising that the opinions should resort to the doctrine of estoppel in order to uphold these bonds.

The recitals in the bonds work no estoppel as against the county.

Judge Morris submits the question whether the county is not estopped by the recitals in the bonds, and answers: "It seems to us that many cases have so held," citing, with other cases, Belo v. Commissioners, 76 N. C., 489, 493, to sustain that view. On page 493, 76 N. C. R., to which he refers, the Court said: "Where bonds have been issued and sold in the market, and have come into the hands of a *bona fide* holder, before maturity, as a general rule, such bonds are *prima facie* valid, and the onus is upon the party impeaching them to show

the contrary. This rule, however, which subsists between individuals, is much modified in respect to CORPORATE BONDS. SUCH BONDS CAN BE ISSUED ONLY IN PURSUANCE OF A SPECIAL GRANT OF POWER, AND THE PARTY CLAIMING THE BENEFIT OF SUCH BONDS MUST SHOW A POWER IN THE CORPORATE BODY TO ISSUE THEM. * * * IT IS NOT DISPUTED THAT THE POWER TO MAKE THE SUBSCRIPTION OF STOCK AND ISSUE THE BONDS WAS CONFERRED UPON THE COUNTY OF FORSYTH."

The sharp distinction is that WE DO DENY THE POWER of Stanly County to issue these bonds. Taking up the burden, the respondents having already failed to show authority in the charter, now say, in effect, that though Stanly County may not have been one of the class of counties upon which the Legislature conferred the power, yet the corporation, by USURPING THE AUTHORITY AND ASSERTING IN ITS RECITALS AND IN ITS LOCAL LEGISLATION that it had the power, has *indirectly* clothed itself with the power, as if the Courts would lend their sanction to the acquisition of such authority by recitals, in default of a leglislative grant.

In Gunnison County v. Rollins, 173 U. S., 255, 265, the Court said: "THE QUESTION OF LEGISLATIVE AUTHORITY IN A MUNICIPAL CORPORATION TO ISSUE BONDS IN AID OF A RAILROAD COMPANY, CAN NOT BE CONCLUDED BY MERE RECITALS; but, the power existing, the municipality *may be estopped by recitals to prove irregularities in the exercise of that power,* or where the law prescribes conditions upon the exercise of the power granted depends, and *commits to the officers of such municipality the determination of the question whether those conditions have been performed, the corporation will also be estopped by recitals which import such performance.*"

Northern Bank v. Porter Township, 110 U. S., 608, 616, 619.

"The estoppel does not arise except upon matters of fact, which the corporate officers had authority by law to determine and to certify."

Dixon County v. Field, 111 U. S.,, 83, 92, 94.
Gunnison County v. Rollins, *supra.*

"No recital will create or dispense with the requisite authority to issue the bond."

1 Randolph Commercial Paper, Sec. 345a.

"Otherwise, it would always be in the power of a municipal body, to which power is denied, to usurp the forbidden authority by declaring that its assumption was within the law."

Dixon Co. v. Field, *supra.*

The rule, as settled by the latest authority, seems to be that where the law authorizes the municipal authorities to determine whether a condition precedent to subscribing and issuing bonds has been complied with, or when the data for determining whether it has been complied with are peculiarly within the knowledge or possession of such authorities, as to such conditions the recitals in bonds issued are conclusive.

Gunnison Co. v. Rollins, 173 U. S., 255.

On the other hand, the burden is on the holder of a municipal bond to show a legislative grant of the power to issue the bonds, and he can not relieve himself by showing that the municipality has falsely represented that it had been clothed with power. *The question here is whether the respondents have shown Stanly County to be n the category of counties which had an interest in the Yadkin Valley Railroad, and that it was an incomplete road.*

AGAIN, NEITHER THE QUESTION WHETHER STANLY COUNTY HAD AN INTEREST, NOR WHETHER THE ROAD WAS COMPLETE, WAS WITHIN THE PECULIAR KNOWLEDGE OF THE COMMISSIONERS OF STANLY COUNTY, NOR WERE THEY CUSTODIANS OF A RECORD BY WHICH ALONE THAT QUESTION COULD BE DETERMINED, AS IN THE

CASE WHERE THE CONSTITUTION OR LAW PRESCRIBED A LIMIT AS TO THE AMOUNT OF INDEBTEDNESS, AND THE COUNTY AUTHORITIES ONLY HAVE THE DATA FOR ASCERTAINING THE OUTSTANDING INDEBTEDNESS.

Gunnison County v. Rollins, *supra.*

The Respondents are Deemed to Have Notice of the Fact That the Railroad had Never Been Begun, and was not Such a Road as the Supreme Court of the State had Defined to be an Unfinished or Incomplete Road, or one in Which the County was interested.

Galloway v. Chatham Railroad 63 N. C., 149.

The preliminary question, whether the railroad was incomplete, or the county had an interest, was not one as to which the Commissioners had peculiar knowledge, qualifying them to answer. They had such knowledge as the whole public could obtain—nothing more. It was incumbent on the respondents to inquire about the fact, because the incompleteness or completeness, or the interest of the county, was a test of the existence of the power of the Board, not a condition precedent to the exercise of a power granted.

In 2 Dillon on Municipal Corporations, Sec. 542, it is said: "And the purchaser must also notice the provisions and extent of the legislative enactments on the subject. Thus, where authority was given to certain counties lying *north* of the Missouri River, a subscription made and bonds issued under such authority by a county *south* of the river are void in the hands of everybody." This is sustained by a decision of Judge Dillon, speaking for the Court in Lafayette Co. v. Sherard, 3 Dillon C. C. R., 236.

In Marsh v. Fulton, 77 U. S., 676, it is said: "The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder. * * * And this applies to every person who takes the paper afterwards; for it is to be kept in mind that the protection which commercial usage throws around negotiable paper can not be to establish the authority by

which it was originated. * * * That would be equivalent to saying that an agent not having the power to do a particular act for his principal, could give validity to such act by indirect recognition." To the same effect is

Oakland v. Skinner, 94 U. S., 429.
McClure v. Oxford, 94 U. S., 255.
S. Ottawa v. Perkins, 94 U. S., 261.
Hays v. Holly Springs, 114 U. S., 120.
Ogden v. Davies Co., 102 U. S., 634.
Buchanan v. Litchfield, 102 U. S., 278.
Purdy v. Lansing, 128 U. S., 557.

In McClure's case, *supra*, it is said that "every dealer in municipal bonds which, upon their face, refer to the statute under which they were issued, is bound to take notice of the statute and all of its requirements." He is, we say, bound to inform himself in all cases as to the power, and in this case it was his duty to have ascertained whether the county of Stanly was one of those counties which was endowed with the power. The recital of the statute here is all the stronger reason why the purchaser should have made the inquiry.

In Hays v. Holly Springs, *supra*, the Court said: "Every *bona fide* holder of a municipal bond is bound to show legislative authority in the issuing body to create the bond. Recitals on the face of the bond, or acts *in pais*, operating by way of estoppel, may cure irregularities in the execution of a statutory power, but they can not create it."

In Buchanan v. Litchfield, *supra*, the recital was similar to ours in that it stated that it was issued "under authority" of a certain act, etc., and as here there was no recital of the "*circumstances*" which permitted the issue of the bonds.

The Court, after denying the estoppel, said:

> "Any different conclusion from that indicated would extend the doctrine of this Court upon the subject of municipal bonds farther than would be consistent with reason and sound policy, and farther than we are now willing to go. The present action can not be maintained unless we should hold that the

> *mere fact* that the bonds were issued, without any recitals of the circumstances bringing them within the limit fixed by the Constitution, was, in itself, conclusive proof, in favor of a *bona fide* holder, that the circumstances existed which authorized them to be issued. We can not so hold."

It is to be noted that the case of Aspinwall v. Knox Co., 21 How., 539, cited in the opinions in the case at bar, was also discussed in the case just quoted from, and the applicability of the doctrine of recitals as applied to cases like that under consideration denied.

The foregoing principles are in accord with the doctrine of Coloma v. Eaves, 92 U. S., 484, and approved in Gunnison County v. Rollins, *supra*.

We deny, therefore, that any recitals on the part of the Commissioners of Stanly County would estop them to deny the want of legislative power, because, as we have argued, the question here is not the determination of a condition precedent or the proper exercise of duties under an admitted power, *but the very existence of the power itself*.

But even if this were not so, and if section 1996 could be fairly construed, as expressly or by implication, authorizing the Commissioners of each county to judicially determine whether any given road was an unfinished road, and whether the county had such an interest in such road as was contemplated by the Legislature, still the recital in this case that the bonds were issued under authority of the statute is insufficient to work an estoppel. But the recital, to be conclusive, even under that view of the law, must have been in this case to the effect that the bonds were issued to aid in the completion of the Yadkin ~~Valley~~ Railroad, were "necessary to aid in the completion" of that railroad, and that "the citizens" of Stanly County had an interest in said railroad, at the time contemplated by the Legislature in passing the act of 1869. (Orleans v. Platt, 99 U. S., 676; Gunnison Co. Commissioners v. Rollins, 173 U. S., 264, 266, 267.)

Attention is called to the fact that the case of the Town of Coloma v. Eaves, 92 U. S., 484, which is cited as authority in

the last brief of the appellees, is also cited by Justice Harlan in Gunnison Co. Commissioners v. Rollins, *supra,* on pages 263 and 264, as authority for the position that recitals, in order to work an estoppel, must not only be as to facts which the corporate officials are empowered by the statute to determine, but must contain the specific statement, not that they are issued by the authority of a certain statute or constitutional provision, but that the requirements were met by a finding of the specific facts, which such constituted authorities were empowered to determine.

We respectfully submit—

(1) That a proper construction of the act will put this case beyond the power of recitals, as the act did not apply to Stanly County.

(2) That this is not a case where the facts were in the peculiar knowledge of the county authorities, or where they were charged with the duty of determining such facts. Such a view would permit a usurpation of power by a false recital.

(3) That if recitals could in any way affect this case, they were wholly insufficient under the authorities we have cited. Since they recite no circumstances upon which the power could be based.

(4) That in this case the purchaser was bound to inquire into the facts necessary to determine the counties to which the statute applied.

(5) That if he can rely upon recitals, he is affected by them also, in that the *order* recited will show that this was a road whose construction had not been commenced when the order was made, and that the proposition was not based upon present, but upon prospective conditions only.

The bonds themselves also recite that this road was not even chartered until 1870, the act, according to the Supreme Court of North Carolina and the Circuit Court of Appeals, applying only to roads begun prior to 1868.

A. C. AVERY,
JAS. E. SHEPHERD,
CHAS. M. BUSBEE,
Attorneys for Petitioners.

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Clerk.

No. 264

MOTION TO ADVANCE.

Supreme Court of the United States,

OCTOBER TERM, 1902.

THE BOARD OF COUNTY COMMISSIONERS OF STANLY COUNTY AND OTHERS, APPELLANTS,

vs.

W. N. COLER & COMPANY, APPELLEES.

Brief of James E. Shepherd and A. C. Avery, Counsel for Appellants.

IN SUPPORT OF MOTION TO ADVANCE.

FACTS RELIED ON IN SUPPORT OF MOTION.

The decision in this cause, which the appellants seek to have reviewed, is one of the Circuit Court of Appeals for the Fourth Circuit, which conflicts directly with three decisions of the Supreme Court of North Carolina, to-wit:

Commissioners v. Snuggs, 121 N. C., 394.
Commissioners v. Call, 123 N. C., 308.
Commissioners v. Payne, 123 N. C., 432.

The first of the foregoing cases, *Commissioners* v. *Snuggs*, is one in which the Supreme Court of North Carolina held that certain sections of The Code of North Carolina did not authorize Stanly County to issue certain municipal bonds, whereas in the cause brought up for review the said Circuit Court of Appeals decided that the very same provisions of said Code did empower Stanly County to issue said bonds. The bonds in question are therefore held to be invalid by said Supreme Court, but are declared valid by said Federal Court.

The same question was decided in the same way by the Supreme Court of North Carolina.

The appellants are of the opinion that the facts set forth above bring this cause within the exception to rule 26, sub-section 7, by showing "special and peculiar circumstances." A very unusual state of affairs is presented when the judges of the Circuit Court of the United States are so long left at liberty to restrain the local agencies of the State from obeying the law as interpreted by the highest tribunal of the State. For four years circuit and district judges, in disregard of State decisions, have been restraining municipal authorities from expending certain funds in a manner declared lawful by their own highest Court. Such a state of uncertainty as to what is the law of the land is to be deplored, because it embarrasses governmental agencies in the discharge of their duties. But this case appears more clearly to present "special and peculiar circumstances" when we consider the fact that they affect the the validity of a class of securities offered upon the market as negotiable, which are declared by the State Courts to be void because issued without such authority as is declared essential by mandatory requirement of the State Constitution, while Federal tribunals are inviting investments in these securities by holding that the decisions of the State Courts are in violation of the Constitution of the United States.

The questions involved are fully presented in the briefs filed in support of the motion for writ of certiorari; but it will be remembered that the Supreme Court of the United States in *Commissioners of Wilkes County* v. *Coler*, U. S., declined to construe these provisions of The Code, because the question was not certified.

JAMES E. SHEPHERD, AND
A. C. AVERY,
Counsel for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 585.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. SNUGGS, Treasurer of Stanly County, Petitioners,

vs.

W. N. COLER & COMPANY.

Brief for Respondents in Opposition to Granting Writ.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
Of Counsel.

Recital in These Negotiable Bonds.

The bonds in suit are negotiable (see Record, p. 7, for copy of bond). They are dated July 1, 1890, and were issued in that year. They recite as follows (Record, p. 7):

"*This bond* is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, making a total of

one hundred thousand dollars, *issued by authority* of an act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled, 'An Act to amend the Charter of the Yadkin Railroad Company,' *and of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*, and authorized by a majority vote of the qualified voters of Stanly County, at an election regularly held for that purpose on the 15th day of August, 1889, duly ordered by the Board of Commissioners of Stanly County."

It will be observed that they recite not only the act of March 3, 1887, *but specifically Sections 1996 to 1999, inclusive, of the Code*, and that the bonds are authorized by a majority vote of the qualified voters of Stanly County, voting at an election held the 15th of August, 1889. These bonds were issued to pay for a subscription to the stock of the Yadkin Railroad Company, mentioned in the bonds, to aid in the construction of the railroad of that company.

Enabling Act.

The following are Sections 1996–2000 of the Code of North Carolina of 1883 :

"SEC. 1996. The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest.

SEC. 1997. The board of commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and, if a majority of the board shall vote for the proposition, this shall be entered upon the record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the board shall order an election, to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board

of county commissioners. And, if a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the amount of stock proposed by them and submitted to the people, subject to all the rules, regulations and restrictions of other stockholders in such company or companies. Provided, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper.

SEC. 1998. All elections ordered under the preceding section shall be held by the sheriff under the laws and regulations provided for the election of members of the General Assembly. The votes shall be compared by *the board of county commissioners*, who shall make a record of the same.

SEC. 1999. In case the *county* shall subscribe the amount proposed in bonds, *the board of commissioners shall have power* to fix the rate of interest, not to exceed the rate of eight per cent., when the interest on said bonds shall be payable, and at what place, and shall also fix the time and places of paying the interest, and shall also determine the mode and manner of the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds.

SEC. 2000. The taxes authorized by the three preceding sections to be raised for the payment of interest or principal shall be collected by the *sheriff in like manner as other State taxes*, and be paid into the hands of the county treasurer, to be used by the chairman of the board of county commissioners as directed by this chapter."

It is admitted by all parties and all courts that these sections of the Code are constitutionally valid, and authorize the issue of bonds on the conditions therein prescribed.

The recital above quoted, in the bonds in question, that they are "*issued by authority of* * * * *Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*," &c., is conclusive in favor of *bona fide* holders of these bonds, that *all the conditions existed*

which were prescribed by these sections of the Code as precedent to the issuance of bonds.

That the words "*issued by authority of* Sections 1996, 1997," etc., in favor of *bona fide* purchasers for value, import full compliance with these sections of the Code, see opinion of Mr. Justice HARLAN in *Evansville vs. Dennett*, 161 U. S., 434, 442, where he quotes from *School District vs. Stone*, 106 U. S., 183, 187, the well-settled doctrine on that proposition. Same quotation, page 5 of our brief, herewith printed and bound. See also *Waite vs. Santa Cruz*, 184 U. S., 302, to same effect.

That it is immaterial that the bonds also recited the invalid act of 1887, see case exactly in point, *Evansville vs. Dennett*, 161 U. S., 434 p. 2, *et seq.*, of our brief, herewith printed and bound; and *Anderson County vs. Beal*, 113 U. S., 227, cited p. 12 of our said brief.

The order of the Board of County Commissioners of Stanly County, under which the subscription was made and the election held and the bonds issued, is set out in full in the record (pp. 19, 20). This order is important, in view of the ground on which the application for the *certiorari* is now made—namely, the ground that the County of Stanly, or the citizens of the county, had no interest in the railroad in question. The order of the Board of Commissioners recites, *inter alia*, as follows (Record, p. 19): "**It appearing that the citizens of said county have an interest in said railroad, it is hereby resolved and ordered," etc.** It ordered an election to be held, as recited in the bond, in accordance with Section 1998 of the Code. The order was carefully considered, and conserved the interests of the county,

because it provided that if a majority of the voters voted to subscribe for the stock of the said railroad the bonds of Stanly County should be delivered as follows: "$25,000 when ten miles is constructed and in operation, from the Rowan County line *into the County of Stanly;* $25,000 when the road is constructed from Salisbury, in said county, into Albemarle; and the remaining $50,000 when the road is constructed from Salisbury into Norwood, in Stanly County," etc. It is admitted on the record, and it is undisputed, that the railroad was completed and put in operation as contemplated in the order and vote of the people of the county. The subscription was accordingly made and the bonds of Stanly County issued, sold in the market and held by *bona fide* holders.

The county levied taxes and paid the interest on these bonds for more than four years.

At the time when these bonds were issued and sold there was no decision of the Supreme Court of North Carolina, or of any of the Courts of the State, that would invalidate the Act of March 3, 1887, referred to in the bonds as one of the sources of power for their issuance, or construing Sections 1996–1999 of the Code as not furnishing authority for the issuance of these or similar bonds. On the contrary, there were many decisions of the Courts of North Carolina in line with the decisions in other States and with the decisions of the Supreme Court of the United States in regard to the issuance of county and municipal bonds.

In 1897, years after these bonds had been issued and sold, the Supreme Court of North Carolina, in what is called the "Stanly suit"—to wit, the case of *Commissioners of Stanly County vs. Snuggs*, 121 N. C., 394, which was a simulated and collusive case, being

brought by the Commissioners of Stanly County against the Treasurer of the County of Stanly, and making no bondholder a party, and in which no bondholder was represented or heard, made a decision on which the petitioners in this case for a writ of *certiorari* rely, the said petitioners being the said Board of County Commissioners of Stanly County, and the said Snuggs being the Treasurer thereof, they being, as above stated, the very parties and the only parties to the suit in the Supreme Court of the State of North Carolina. In other words, these two petitioners, who are now here on the same side of this case, both claiming that these bonds are invalid—that is, the Board of Commissioners of the County of Stanly and the Treasurer of the County of Stanly—were the very parties, and the only parties, to the Stanly case in the Supreme Court of North Carolina. They were really not adversary parties in that suit in the Supreme Court of North Carolina, but were really both on the same side of the case. The suit was thus really only between different officers of the same body corporate, and there was really but one party before the Court—namely, the County of Stanly; and that was the decision which the petitioners in this case now contend conclusively determined the rights of the holders of these bonds, issued years before that case was decided. The bare statement of the proposition shows its audacious and preposterous character. When that decision is considered, as it is in the opinions of Judges MORRIS and BOYD, Judges of the United States Circuit Court of Appeals, it is inconceivable that the learned Judges of the Supreme Court of North Carolina would, or ever could, have made such a decision, if the parties in interest

had been present or represented—to wit, the bondholders.

The question presented on this application for a writ of *certiorari* is very short—Is the decision of the Circuit Court of Appeals right? If it is, it ought to end the controversy, and without reference to the decision in the collusive and simulated case of *Stanly County vs. Snuggs*, to which we have referred, and which is the sole basis for the present application for a writ of *certiorari*.

We have not deemed it necessary, on this application for a writ of *certiorari*, to do more than to refer to the able opinions of Judges MORRIS and BOYD in the United States Circuit Court of Appeals, printed in the record in this case (pp. 81 to 102, inclusive), and to reprint as a part of this brief the brief which we filed in the United States Circuit Court of Appeals on behalf of the appellees on the petition for a rehearing, which petition was granted, as shown in the record. It is shown in the above-mentioned opinions of MORRIS and BOYD, JJ., and in our said brief that the decision of the United States Circuit Court of Appeals in favor of the validity of these bonds is clearly correct.

There was lawful statute authority, properly enacted by the Legislature, authorizing the issue of bonds by counties, namely, Sections 1996 to 1999 of the Code. The bonds were issued by the County of Stanly, reciting that they were issued "by authority of * * * Section 1996, 1997, 1998 and 1999 of the Code of North Carolina," and "authorized by a majority vote of the qualified voters of Stanly County," etc. This recital is conclusive in favor of the *bona fide* holder of these negotiable bonds that all the facts existed which, by the said Sections 1996 to 1999 of the Code, were prerequi-

site to the issue of the bonds, and the County of Stanly is estopped to deny such facts.

But, furthermore, the order above referred to, entered by the Board of Commissioners of the county, and all the proceedings for the issuance of these bonds show that, as a matter of fact, the conditions existed which, under said Sections 1996 to 1999 of the Code, were necessary in order that bonds might be issued under the authority of the said sections. The said order of the Board of County Commissioners recites, what was true in fact, that the citizens of the county had an interest in the said railroad, and there is not a particle of evidence, proof, or finding of any kind, in the record to show the contrary ; but the county is, by the recitals in the bonds, estopped to show the contrary.

Inasmuch as the construction of the words in the sections of the Code referred to as to the "interest" of the citizens of the county, and the "completion" required by those sections, is fully discussed in the opinions of Judges MORRIS and BOYD and in our brief on the rehearing, made a part of this present brief, and in the brief of our associate counsel, Mr. PRICE, we do not enlarge upon it in this place.

As the time for the preparation of briefs is short, we and our associate counsel, Mr. PRICE, have prepared separate briefs, so as to have the matter presented to the Court at the present term.

As the decision of the United States Circuit Court of Appeals is clearly correct, the petition for writ of *certiorari* should be denied.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
Of Counsel for Respondents.

IN THE

United States Circuit Court of Appeals,

FOURTH CIRCUIT.

No. 290.

THE BOARD OF COMMISSIONERS OF STANLEY COUNTY ET AL.,

Appellants,

vs.

W. N. COLER & COMPANY,

Appellees.

Brief of Appellees on Rehearing.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

IN THE

United States Circuit Court of Appeals

FOURTH CIRCUIT.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY ET AL.,
Appellants,

vs.

W. N. COLER & COMPANY,
Appellees.

Brief of Appellees on Rehearing.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel.

I.

The recitals in the bonds are conclusive in favor of the bona fide holder thereof, and estop the county.

The bonds recite (Record, p. 8) that they are

"*issued by authority* of an act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled 'An Act to amend the charter of the Yadkin Railroad Company,' *and of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*, and

authorized by a majority vote of the qualified voters of Stanley county," etc.

The bonds, therefore, thus expressly recite that they are "issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina."

It is admitted by all courts and all parties that these sections of the Code of North Carolina were properly enacted by the legislature, and that the journals so show. This Code, therefore, is a valid act, which authorizes the issue of bonds under the circumstances and upon the conditions and terms therein stated.

The precise proposition that we now state is this: that whatever be those circumstances and conditions, whether the railroad in aid of which the bonds are to be issued must have been an unfinished road at the time of the adoption of the constitution, or at the time of the passage of the act of April 10, 1869 (which afterwards became Sections 1996 *et seq.* of the Code), or whether the citizens of the county must have had an interest in the road—in short, whatever may have been the conditions required by the said Code to exist in order to authorize the issue of bonds thereunder—the said express recital in these bonds is conclusive in favor of the *bone fide* holder of these bonds, that all those conditions existed which were required by the said sections of the Code to exist precedent to the issue of the bonds.

This precise proposition has been repeatedly determined by the Supreme Court of the United States. We need refer only to a single case; namely, *Evansville vs. Dennett*, 161 U. S., 434. In that case there were two sets of bonds involved. The bonds issued to the Evansville, Carmi and Paducah Railroad Company recited that they were issued

"by virtue of an act of the general assembly of the State of Indiana, entitled 'An act granting to the citizens of the town of Evansville, in the county of Vanderburg, a city charter,' approved January 27, 1847; and, by virtue of an act of the general assembly of the State of Indiana, amendatory of said act, approved March 11, 1867, conferring upon the city council of said city power to take stock in any company," etc.

With reference to the act of March 11, 1867, the Supreme Court of the United States said (p. 439):

"It is certified to us that, under the decision of the Surpeme Court of the State of Indiana, this latter act [March 11, 1867] was invalid, because amendatory of a prior invalid act.

"The bonds in question, of both series, were in fact issued in attempted compliance with the act of March 11, 1867, referred to in the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company.

"The ordinances of the city council of the city of Evansville authorizing the issue of both series of bonds disclose that they were issued pursuant to an election by the legal voters of the city of Evansville, but do not recite that any petition of resident freeholders of the city was presented to the common council, as required by the charter; and *no such petition was, in fact, in either case made or presented to the common council of city of Evansville.*"

That case, therefore, was precisely like the present case in this, to wit, the bonds recited two acts, one the act of March 11, 1867, which was invalid, the other the charter of the city of Evansville, which was valid. The charter of the city of Evansville gave authority to issue bonds on certain conditions. The provisions of the charter of the city of Evansville, however, were not complied with. The bonds, however, recited that they were issued "by virtue of" the city charter; *i. e.*, the act approved January 27, 1847.

On this state of facts the United States Circuit Court of Appeals for the Seventh Circuit, certified to

the Supreme Court of the United States, among others, the following questions (161 U. S., 440):

"3. Do the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company, as against a *bona fide* purchaser for value of such bonds, estop the City of Evansville from asserting that such bonds were not issued, for stock subscribed, upon a petition of two-thirds of the resident freeholders of the city, distinctly setting forth the Company in which stock was to be taken, and the number and amount of shares to be subscribed? [Yes].

"4. Under the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company was a *bona fide* purchaser for value put upon inquiry to ascertain whether a proper petition of two-thirds of the residents of Evansville, freeholders of that city had been presented to the Common Council before that body had subscribed for stock in the said railroad company? [No].

"5. Was a *bona fide* purchaser for value of the bonds issued to the Evansville, Carmi and Paducah Railroad Company charged by the recitals in said bonds with notice that they were issued in pursuance of an invalid act, and in pursuance of an election under it [No], or **had such a purchaser a right to assume, from the recital, that the prerequisites of both the valid act and the invalid act had been observed by the Common Council before the issuance of such bonds? [Yes].**

Note the precise question presented to the Supreme Court of the United States in the case of *Evansville vs. Dennett* under said certified question No. 5, above quoted, was whether the purchaser had a right to assume from the recital that the prerequisites of both the valid act, namely, the charter of the city, and the invalid act, namely, the act of March 11, 1867, had been observed by the common council before the issuance of the bonds, this question being the latter half of question No. 5. The Supreme Court of the United States answered "Yes." We will not quote here the entire language of the case. It is enough here to re-

peat the quotation made by Mr. Justice HARLAN in giving the opinion. He says (p. 442), quoting from *School District vs. Stone*, 106 U. S., 183, 187:

"'Numerous cases have been determined in this court, in which we have said that, where a statute confers power upon a municipal corporation, upon the performance of certain precedent conditions, to execute bonds in aid of the construction of a railroad, or for other like purposes, and imposes upon certain officers, invested with authority to determine whether such conditions have been performed, the responsibility of issuing them when such conditions have been complied with, recitals by such officers that the bonds have been issued 'in pursuance of' or 'in conformity with,' or 'by virtue of' or 'by authority of' the statute, have been held in favor of *bona fide* purchasers for value to import full compliance with the statute, and to preclude inquiry as to whether the precedent conditions had been performed before the bonds were issued (*Town of Coloma vs. Eaves*, 92 U. S., 484; *Commissioners vs. Bolles*, 94 U. S., 104; *Mercer County vs. Hacket*, 1 Wall., 83; *Anderson County Commissioners vs. Beal*, 113 U. S., 227, 238-9, and authorities there cited; *Cairo vs. Zane*, 149 U. S. 122)."

We say, therefore, that, *whatever be the conditions or circumstances* required to exist by the Code precedent to the issuance of these bonds—whether the road must have been an unfinished road at a certain time, whether the citizens of the county must have had an interest in the road, or whether the taxable property in the county must be such that a tax rate to pay the bonds would not exceed double the State tax—in short, whatever possible conditions might be required by these Code sections—the recitals in the bonds gave the purchasers thereof "the right to assume that the circumstances existed which authorized the county to exercise the authority given by the Legislature" (see *School District vs. Stone*, 106 U. S., 183, 187, quoted *supra*).

This proposition is conclusive in favor of the holders of these bonds. The act—namely, the said sections of the Code—was valid, and admitted to be valid by all Courts and all parties. Said sections gave authority under certain circumstances to issue bonds, and the recital is conclusive that those circumstances existed.

The learned counsel for the County of Stanly, in his supplementary brief filed in the Supreme Court of the United States when the Wilkes County case was heard, attempted to make the point that these bonds show on their face that the road was not begun before the adoption of the constitution of North Carolina—in 1868. He makes his argument as follows: That the bonds in the present case recite the act of March 3, 1887—namely: "An act to amend the charter of the Yadkin Railroad Company." He then makes the further proposition that the purchaser is charged with notice of the original charter of the Yadkin Railroad Company (not recited in the bond), and that, if this original charter is examined, it will be found to be Chapter 236 of the acts of 1870, which was enacted after the constitution was adopted.

This argument, however, is clearly insufficient. A purchaser of the bonds, reading the bond, would, it is true, see that the act of March 3, 1887, is recited. It would then be his duty, under the decisions of the Supreme Court of North Carolina, to examine the journals of the legislature of the State of North Carolina to see whether those journals showed that the said act was properly enacted, and, on examining such journals, he would find that it was not properly enacted. This purchaser might then drop the matter of this act to amend the charter of the Yadkin Railroad Company, and go no further on that act. He could then proceed to examine Sections 1996 *et seq.* of the Code, and it would

then be his duty to examine the journals of the legislature to see whether said sections of the Code were properly enacted. Having found that said sections were properly enacted, then he finds the recital in the bonds to be that the bonds are issued *by authority of the said sections.* Now, our proposition is that, under the repeated decisions of the Supreme Court of the United States, the purchaser of the said bonds need go no further. He need not go back and examine all the pre-existing legislation, the charter of the railroad company, the question whether the railroad had been begun before the constitution was adopted, or before April 10, 1869, when the matter which is now the Code sections was originally enacted. If he had made such inquiry he might have found that the railroad was begun before the adoption of the constitution, even although the charter of this particular railroad company had not been granted until afterwards. The decisions of the Supreme Court of North Carolina, even at their most, they do not decide that the railroad *company* which owns the railroad in respect of which the bonds are issued must have been *chartered* before the adoption of the constitution. The only requirement, at the utmost, is that the *railroad* should have been begun before the adoption of the constitution. Nothing appears on the face of these bonds, and nothing appears from the legislation therein recited, to show that the railroad in question may not have been begun long before the adoption of the constitution.

But all this, under the decision of the Supreme Court of the United States in *Evansville vs. Dennett,* is a matter which the *bona fide* purchaser of these bonds, under the recitals therein contained, need not concern himself. As soon as he has found these Sections 1996 *et seq.* of the

Code, and has found that they give authority to issue bonds under some circumstances therein mentioned, and has found from the journals that these sections of the Code were properly enacted by the legislative body, he has then a valid act, properly enacted, authorizing the issue of these bonds, and as the bonds recite that they are issued by authority of that act, this recital is conclusive in his favor.

It makes no difference in this respect that the bonds also recite the invalid act of March 3, 1887. Such was the precise fact in *Evansville vs. Dennett* with respect to the invalid act of March 11, 1867, recited in the bonds in question in the said Evansville case. The decision of the Supreme Court was to this effect, that, although this invalid act was recited, the purchaser of the bonds "had a right to assume from the recital that the prerequisites of both *the valid act* and the invalid act had been observed by the common council before the issuance of the bonds" (p. 440).

The foregoing proposition we regard as conclusive of this case in favor of the holders of the bonds. It is a proposition which is decisive of the case, and we urge it with great confidence, since it is not noticed or discussed in the opinion of the court in this case which has been already filed. Nevertheless, on this rehearing we have thought it proper to go into the case at length, and therefore we have below stated more at length the

various arguments to show that even if the county is not estopped by the recitals in the bonds, the bonds are nevertheless valid and enforceable.

II.

There was lawful authority for the issue of these bonds in the present case UNDER THE CODE, **sections 1996 to 2000. These sections of the Code were originally adopted as the act of April 10, 1869. They were afterwards adopted as sections 1996 to 2000 of the Code of North Carolina of 1883. It is admitted by all that these sections of the Code, 1996 to 2000, were adopted in accordance with the constitution as respects the three several readings and the entry of yeas and nays upon the journal, etc.**

The Supreme Court of the United States, in the *Wilkes county case*, was careful in answering the first question to say that the Federal court should follow the decisions of the state Supreme Court as controlling upon the inquiry whether legislative enactments of 1868, 1879 and 1881 were passed in such manner as to become, under the constitution, laws of the state, and thus the Supreme Court limited the effect of these decisions of the state Supreme Court to the point whether they had become laws of the state under Article II., Section 14, of the constitution. The Supreme Court of the United States, by thus carefully limiting its answer to the first question, has, in

effect, stated that these decisions of the Supreme Court of the State of North Carolina, with regard to the sections of the Code, are not to be controlling in the Federal Courts, and hence the general rule applies that the Federal Courts should either follow the decisions which were in existence when the bonds were issued, if there were any, or, if not, then they should consider the questions for themselves, and they are not controlled by any subsequent decision of the state Supreme Court. Hence, decisions of the Supreme Court of North Carolina, construing the Code made *after* the bonds in question were issued, do not bind the Federal courts, if such subsequent decisions of the Supreme Court of North Carolina are not in accordance with the general principles of jurisprudence, but the Federal courts may and should, exercise their own independent judgment. There is a long line of decisions to that effect in the Supreme Court of the United States, and these decisions relating to the construction of statutes are expressly recognized and distinguished by the Supreme Court of the United States in its opinion.

You will notice that on page 519 the Supreme Court says, referring to the acts of 1868, 1879 and 1881, as follows :

> " Observe that the issue is not as to the construction, meaning or scope of a statute, but whether that which purports to be a legislative enactment ever became a law for any purpose."

Under this decision of the Supreme Court of the United States, the Circuit Court of Appeals will, of course, no longer feel bound by the decision of the Supreme Court of North Carolina construing the Code *after* the bonds were issued.

OUR FIRST PROPOSITION *under these sections of the Code is that they are prospective in their operation, and that they are not limited to any railroad which had been begun either before the constitution of 1868 was adopted or before the adoption of these sections of the Code by the act of April 10, 1869.*

The language of section 1996 of the Code is: "The Board of Commissioners," etc., "*shall have* power to subscribe stock," etc., "to aid in the completion of any railroad in which the citizens of the county *may have* an interest." *All this is future.* It applies to any railroad in which the citizens of the county may have an interest, either when the act was adopted *or at any time afterwards.* There is nothing in this language which restricts the operation of the act either to the time of the adoption of the constitution of 1868 or to April 10, 1869, the time of the first enactment of the statute which became these provisions of the Code. Any of the recent decisions of the Supreme Court of North Carolina to the contrary are wholly indefensible, and have no support in the language of these sections of the code. Inasmuch as all of these decisions were rendered after these bonds were issued, they are not binding upon the federal courts (See *Folsom vs. Ninety-Six*, 159 U. S., 61).

These sections of the Code required an election and a vote of a majority of the qualified voters of the county in favor of the proposition of subscribing the stock and issuing the bonds. This provision was complied with in the case of this present issue of bonds. The bond recites it (Record, p. 8). The complaint in the State Court suit (Record, p. 19) alleges compliance, and the answer of the county commissioners in the State Court suit (Record, p. 25) also admits compliance with this provision of the code.

The recital in the bond is that the bond is "authorized by a majority vote of the qualified voters of Stanly county by an election regularly held for that purpose, on the 15th day of August, A. D. 1889." We are aware of the fact that the said bonds recite that they are issued by authority of the act of March 3, 1887, But the recital of the act (if that act of March 3, 1887, be held not to give authority) would not invalidate the bonds, if they were, in fact, authorized by some other act, as sections 1996 to 2000 of the Code, now under consideration. See *Anderson County vs. Beal*, 113 U. S., 227, where the wrong act was recited. In that case this Court, notwithstanding the bonds recite the wrong act, held, as respects the recital of the election, as follows, to wit (p. 239) :

"In view of all this, the statement by the commissioners in the bond that it is issued 'in pursuance to the vote of the electors of Anderson county of September 13, 1869,' is equivalent to a statement that 'the vote' was a vote lawful and regular in form, and such as the law then in force required in respect to prior notice."

See, also, *Evansville vs. Dennett* in this Brief *ante*, POINT I.

This recital, therefore, of the election in this Stanly county bond is a recital of an election under sections 1996 to 2000 of the Code, and is conclusive in favor of the *bona fide* holders of these bonds, as was held in the said case of *Anderson County vs. Beal*, *supra*.

Sections 1996 to 2000 of the Code do not violate Article 5, Sections 6 and 7, of the Constitution as to "Special purpose," "Special object" or "Special approval" of the General Assembly.

Said Sections 6 and 7, Article 5, of the Constitution are as follows:

SECTION 6. "The taxes levied by the Commissioners of the several counties for county purposes, shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly."

SECTION 7. "Every act of the General Assembly levying a tax, shall state the special object to which it is to be applied, and it shall be applied to no other purpose."

It was objected by the state court in the case of *Commissioner vs. Call*, 123 N. C., 308, and in *Commissioners of Stanly County vs. Snuggs*, 121 N. C., 394, 400, 401, cited in the *Call Case*, p. 323, that these provisions of the Code are a general act, and as such violate Article V., Section 6 and 7, of the constitution, which provides, in substance, that taxes levied by the commissioners of the several counties for county purposes shall be levied in like manner as the state tax, and shall never exceed the double of the State taxes, except for a special purpose, and with the special approval of the General Assembly, stating the special object to which the tax shall be applied.

(a) **In the present case, however, there is not a word or syllable in this record to show that the county tax necessary for these**

bonds would exceed double the state tax; therefore, the question does not arise.

(b) **If, however, it had been shown in the record in this case that the county tax for these bonds might exceed double the state tax, then these bonds are, nevertheless, valid:**

First, because the Code does not violate the provisions of Article V., Section 6 and 7, above referred to. The constitution only requires that the legislature give special approval to the special purpose for which any tax is levied in excess of the rate named, but such special approval may be given as to all the counties, as well as to any one county, the object of the provision of the constitution being to require the special assent of the legislature to the special purpose. If the rate referred to in Article V., Section 6, is to exceed the double of the state tax, this section requires the legislature to specify the special purpose for which it may so exceed the state tax. The legislature could not authorize such excess by an act, general or special, which only named county purposes generally, and did not specify the special or particular purpose, but it is not necessary that the legislature should in each instance specify by name any particular county or counties. The specification required is only a specification for a special purpose. Legislative authority to subscribe for the stock in a railroad company and issue bonds in payment of such subscription is a special purpose within the meaning of this section, and so the sections of the Code, 1996 to 2000, being the act of April 10, 1869, do specify the special purpose for which the

tax is to be levied. It is not necessary to name by name each particular county. If these sections of the code had provided that the county commissioners of the county, A, B, C, D, etc., naming all the counties in the State, should have power to subscribe for stock in any railroad company, etc., obviously this would be good, for the very Section 6, Article V., of the constitution, referred to, contemplates that such taxes may be levied by all "the several counties" of the state. The constitution does not say that any special act is required, but only requires that the purpose be specified, and that the tax and the purpose have the special approval of the General Assembly.

The proposition of the Supreme Court of North Carolina on this point seems to be, in effect, that if the legislature passes a special act for each county in the state; that is to say, ninety-five acts, each act exactly alike, except that one act applies to one county and another to another, and so on through all the ninety-five acts, the legislation is good; but if the legislature, instead of doing this, enacts precisely the same act and says that this act shall apply to all counties in the state, then such an act is bad. Such a view is, of course, unsound, and, if that be the view of the state Supreme Court, the federal courts cannot be expected to follow it as to negotiable bonds issued before such state decision was made.

BUT, SECOND, *however this point may be decided, a ruling one way or the other would not invalidate these bonds. A bond may be a valid obligation, although there there is not sufficient tax to pay it.*

Such bonds could be paid by as much tax as could be levied, and, if at any time the legislature did pass a special act giving its special approval to the levy of a

further tax, then the defect of a lack of power to tax would be removed, if such defect existed. Therefore, on this point, the objection raised by the Supreme Court of North Carolina must fall. That there may be bonds which are valid, altough there is a tax-rate limit, is well settled. See *United States vs. Macon County*, 99 U. S., 582. Article V., Section 6 of the constitution of North Carolina is a mere limitation upon the tax rate, such as was involved in this case of *United States vs. Macon County*, just cited.

FURTHERMORE, THIRD, *even if there be this tax-rate limit in Article V., Section 6 of the constitution of North Carolina, that is a mere limit. It does not appear as a matter of law on the face of the constitution, or on the face of these sections of the code, or on the face of these bonds, that in the instance of these particular bonds of Stanly county the tax-rate limit would be exceeded. Whether or not this tax-rate limit would, as a fact, be exceeded, as a matter of pais, of which the holder of a negotiable bond, like the bonds in question in the present case, is not bound to take notice* (See POINT I. of this Brief, *supra*). Moreover, as above stated, there is no proof in the prasent case that the county tax for these bonds would exceed double the state tax.

Erroneous Construction of the Word "COMPLETION" in Section 1996 of the Code, by the Supreme Court of North Carolina in its Late Decision in the *Stanly County Case*, 121 N. C., 394, 1899.

The Supreme Court of North Carolina, at this late day, in *Commissioners of Stanly County vs. Snuggs*, 121 N. C., 394, has taken a very narrow view of the word "completion." It has undertaken to say that these

sections of the Code refer only to a railroad which had been begun, and that the word "completion" is not synonymous with "construction," but that the language here requires that there must have been an unfinished road.

The court went further, and held that there must have been a road unfinished *at the time of the adoption of the constitution*, April 24, 1868, in order that these sections of the code might have application. This interpretation of the word "completion," we submit, is not the correct one.

It seems obvious that it is used as synonymous with the word "construction." This view is, we think, supported by the obvious difference between this language and the language used in the state constitution as respects the issue of state railroad aid bonds. Article V., Section 4, of the constitution prohibits the issue of State railroad aid bonds, "except to aid in the completion of such railroads as may be *unfinished at the time of the adoption of this constitution.*" Section 1996 of the Code, adopted April 10, 1869, about one year after the framing of this provision of the state constitution, omits the significant words—namely, "unfinished at the time of the adoption of this constitution." On no possible theory can these words be read into the statute. The legislature did not put them there, and the courts cannot put them there.

Erroneous Construction in the *Stanly County Case* by the State Supreme Court of the Words "any Railroad in which the Citizens of the County May Have an Interest," see said Section 1996 of the Code.

The Supreme Court of North Carolina held that the words of Section 1996 of the Code, "the citizens of

the county may have an interest," do not mean exactly what they state, but hold that they require that the county, *as a county*, shall have a *pecuniary* interest in the railroad, in order that Section 1996 may apply to it. On this point it seems only necessary to state that no such words occur in Section 1996. This construction by the Supreme Court of North Carolina takes out the words "*the citizens*" and inserts the word "*pecuniary*," and thus it holds that the words "any railroad in which the citizens of the county may have an interest" are to be construed as follows, to wit: "Any railroad in which the county has a pecuniary interest." A mere statement of such a distorted construction of this language of the code is enough to refute any such construction. Here, too, again we may call the attention of this Court to the language of Article V., Section 6, of the constitution of the state of North Carolina when it was dealing with the question of the right of the State to issue railroad aid bonds. There it refers to a railroad "in which the State has a *direct pecuniary interest.*" This section 1996 of the Code was adopted about one year after the said Article V., Section 6, of the constitution. Doubtless the legislators had before them this provision of the constitution, or, at least, were familiar with it. The difference in the language was obviously intentional and significant.

The history of the adoption of this provision of the State Constitution as to State Railroad Aid bonds shows that it had a different purpose from that of the Code (§§ 1996-2000).

What is now Section 5 of Article V. of the constitution was originally reported to the Constitutional Convention of 1868 by the committee on finance as follows:

"Until the bonds of the State shall be at par, the General Assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State, except to supply a casual deficit, or for suppressing invasion or insurrection, unless it shall be in the same bill levy a special tax to pay the interest annually" (Journal, p. 354).

An amendment was proposed as follows:

"And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads and other works of internal improvement as are unfinished, and in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon" (Journal, p. 354).

This proposed amendment was further amended as follows:

"Mr. Tourgee moved to amend by striking out 'are' in the fifth line and inserting 'may be;' insert after the word 'unfinished' in the fifth line '*at the time of the adoption of this constitution.*' Strike out 'and' in the fifth line and insert 'or.' This amendment of Mr. Tourgee's was accepted, and the proposed amendment, as amended, was adopted (Journal, p. 354).

On pages 85 to 90 of the convention journal is a report made January 29th, 1868, by the Treasurer of the State to the President of the convention as follows:

"SIR—I have the honor, in response to the resolution of your honorable body requesting me to furnish the convention a 'statement of the indebtedness of the State, to what parties or sources, what amount to each, what is the amount of her indorsement for railroad or other improvements, what further indorsement of railroad bonds she is directed to make under any existing law or regulation, and, when passed, what property, or assets, or securities, said State holds for or on account of said indebtedness, what amount of stock the State

holds in the several corporations of this State, and what amount of dividend or interest she receives annually from each source.'" * * *

The report of the Treasurer shows that, prior to the meeting of the convention, the State had undertaken to issue its bonds in aid of certain railroads, and that, under the statutes then existing, the State was liable to be called upon for the issue of additional bonds, or for the guaranty and payment of additional bonds, and the State owned Stocks in certain railroads, thus having a direct pecuniary interest in them. The amendment made to Section 5, Article V., of the Constitution above quoted was designed to enable the State, *without a vote of the people*, to carry out its contracts already entered into on railroads, &c., already begun and to protect its interests in the railroads, &c. already begun. *With a vote of the people* the State was allowed to aid railroads without restriction. As the Constitution, Article VII., Section 7, did not allow counties to incur any debt in any case (except for necessary expenses) without a vote of the people, the reason for the provision as to *unfinished* railroads in case of State aid, did not apply to counties, and was purposely omitted in the Act of April 10, 1869 (now Sections 1996-2000 of the Code).

This view is supported by the following decision rendered by the North Carolina Supreme Court in 1869, the year following the Constitutional Convention.

In *Galloway vs. Chatham Railroad Company*, 63 N. C., 147, the suit was to enjoin an issue of State bonds in aid of the railroad company. The court held that the bonds were unauthorized under the provisions of the constitution. In the course of the opinion (PEARSON, C. J., giving the same) the court say, with respect to the restrictions on the power of the state to

incur debt, speaking of the debt existing at the time of the adoption of the constitution of 1868 (p. 153):

"It will be found that most of the public debt was incurred in three modes: 1st, by subscribing for stock in railroad and navigation companies, and issuing bonds to pay for the stock, the state becoming a member of the corporation; this is the heaviest item, and amounts to say eight millions of dollars; 2nd, by issuing bonds of the state and exchanging such bonds for a like amount of the bonds of the corporation, the state not becoming a stockholder and taking collateral security of more or less value; this is the next heaviest item, and amounts to about three millions of dollars; 3d, by endorsing the bonds of corporations and taking a mortgage or some other collateral security; this item amounts to about two millions.

These are the three modes by which, judging from the past, it was apprehended the public debt might be so run up as to ruin the credit of the state and tarnish her honor and her reputation for good faith.

* * * (p. 155). The suggestion that the credit of the state was given by this statute to aid in the completion on an *unfinished railroad* was not strongly urged on the argument, and indeed it could not be. An unfinished road is one that has been begun and partly worked on, and such a road is made an exception, on the ground that it might be proper to finish it in order to prevent a sacrifice of the work that had been done. There is no evidence that such was the fact in regard to this road. The other suggestion, that the state has a direct pecuniary interest in this road, was properly abandoned. The word '*has*' is in the present tense. The exception is obviously confined to roads in which the state had a direct pecuniary interest at the time of the adoption of the constitution; otherwise the state might, by a subscription for stock, become directly interested in every railroad or navigation scheme that should thereafter be projected, and thus the restrictions of the constitution would be of no effect whatever."

Note the difference between the language of the Constitution as to State aid bonds and the language of the Code as to county aid bonds. The Constitution says "*has*," and note the comments of the court on the present tense. The Code says "*may have*," &c., &c.

Of course such of these decisions of the Supreme Court of North Carolina as were rendered after the bonds in question in the present case were issued are not binding upon this Court, and it is both the right and duty of this Court to construe this language of sections 1996–2000 according to their natural and proper meaning.

Within the meaning of Section 1996 of the Code the citizens of a county have an interest in any railroad running into or through the county, and this section would be confined according to *such* railroads.

No "policy" of the State against Railroad Aid Bonds. Provision as to "unfinished" railroads applies only in case of State aid bonds.

The learned counsel for the county apparently attempts to make an argument that there was a *policy* of the State of North Carolina, as evidenced in the constitution of that state, adopted in 1868, against issuing railroad aid bonds by either the state or counties, except in aid of roads which were unfinished at the time of the adoption of the constitution. There was no such policy. The only policy was this—that no State bonds should be issued to aid any *new* railroads, unless there should be a vote of the people, but with such a vote the state could aid any railroad, whether it had been begun or not at the time of the adoption of the constitution. If the railroad had been begun and was unfinished at the time of the adoption of the constitution, state bonds might be issued in aid thereof without any vote of the people. *As to counties, there was no distinction made as to whether the road was finished or unfinished at*

the time of the adoption of the constitution. A vote of the people of the county was required for the issuance of railroad aid bonds of a county in either case, whether a road had been begun or was a new railroad, and there was absolutely no distinction whatever made in the constitution between new roads and unfinished roads so far as respects county aid, and no such distinction existed in the Code, or in any other provisions of the statute.

Even the learned counsel for the county would admit that if there had been a special act authorizing the issue of these bonds, or if the act of March 3, 1887, had been properly enacted by the legislature, there would have been clear constitutional power to issue these bonds. How, then, can the learned counsel seriously argue that the constitution of the state of North Carolina has adopted any policy as against the issue of county railroad aid bonds.

Further, as to Code Sections 1996–2000. These sections give power to issue the bonds. The objections of the County further answered.

The learned counsel for the county says, in substance, in regard to the Code provisions, Sections 1996 to 2000, originally adopted April 10, 1869, these are to be construed the same as the provisions in the constitution of the state, Article V., Section 4, in regard to the issue of railroad-aid bonds by the state, stating: "It was deemed a part of the policy of the state to place

its subdivisions under the same restrictions as the state, by preventing them from aiding in the completion of a road not then begun." There is not anything in the Code or in any of the statutes or in the Constitution of the State which supports any such view. The significant language of Article V., Section 4, of the constitution of the state, as applied to *state* railroad-aid bonds, is purposely omitted when the constitution deals with *county* bonds in Article VII., Section 7, and is purposely omitted from the said provisions of the Code. The Supreme Court of North Carolina, in *Commissioners of Stanly vs. Snuggs*, 121 N. C., 394, committed an obvious and glaring error in holding that the same provisions applied to a *county* as to the *state*.

We may note in passing that the learned counsel for the county, in dealing with Article V., Section 4, of the constitution of North Carolina in connection with his argument in respect of code sections 1996 to 2000, would omit the significant words "*a direct pecuniary*," so that he would make a clause in that section, as respects state aid, read "a railroad which may be unfinished at the time of the adoption of the constitution, or in which the state has *an interest*," whereas that section of the constitution really reads, "except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution, or in which the state has a *direct pecuniary* interest, unless the subject be submitted to a direct vote of the people of the State," etc. The claim of the learned counsel—that a "direct pecuniary interest" is required in the case of *county* bonds—is erroneous, and the decision of the Supreme Court of North Carolina in the case of *Stanly County vs. Snuggs*, 121 N. C., 394, is plainly erroneous.

The learned counsel for the county speaks of the case of *Stanly County vs. Snuggs*, 121 N. C., 394, and says, in substance, that in that case the words in code section 1996, act of April 10, 1869, "in the completion of any railroad in which the citizens of the county may have an interest" were construed as speaking of railroads *unfinished* at the time of *the passage of the act or the adoption of the constitution*. The fact is, the court, in the case of *Stanly County vs. Snuggs*, held that those words in the code were retroactive and went back to the time of the adoption of the constitution (April 24, 1868), although there was not a word or syllable in the said Code, or in the act of April 10, 1869, to indicate that they were intended to have any such retroactive effect. The learned counsel continues (p. 19, bottom):

"It was deemed a part of the *policy* of the state to place its subdivisions under the same restrictions as the state, by preventing them from aiding in the completion of a road not then begun."

The fact is that there was "no policy of the state" to prevent a county from aiding in the completion of a road not begun at the time of the adoption of the constitution, or at the time of the passage of the act of April 10, 1869, nor even to prevent the state from aiding such road. The restriction was that a county should not aid any road begun, or not begun, unless by a vote of the people. The restriction on the part of the state was less than this, to wit, the state was permitted, *without* a vote of the people, to aid any railroad which had been then begun, and was permitted to aid *any* railroad (begun or not begun) *with* a vote of the people.

The learned counsel for the county would omit from his quotation of Article V., Section 4, of the constitu-

tion, the significant words "*a direct pecuniary*" [interest], which apply only to *state* railroad aid *without* a vote of the people, and then goes on seriously to argue that the same direct pecuniary interest is necessary in the case of aid by a county, although neither the code nor the constitution makes any such provision. The bare statement of such an argument is enough to refute it.

Furthermore, whether or not the railroad had been begun before April 10, 1869, or even before the adoption of the constitution (April 24, 1868), was a fact *in pais* to be determined by the county commissioners before they issued the bonds, and not a matter with which the holder of these negotiable municipal bonds is concerned.

The Code of North Carolina is one act (Code, Section 3876), and went into operation November 1st, 1883 (Code, Section 3866).

At the end of volume 2 of the Code, at bottom of page 603, *it is declared that the requirements of Sec.* 14, Article 2, of the Constitution of North Carolina, have been complied with in the passage of the Code; and this is also admitted.

It is admitted that the Board of Commissioners was proceeding under the provisions of sections 1996 and 1997 of the Code, as well as under the act of March 3, 1887. If this be true, then the bonds are valid, notwithstanding the recitals in the bonds, provided the Code provisions conferred the power to issue them on the board.

Knox. Co. vs. Ninth Nat. Bank, 147 U. S., 91.
Cairo vs. Zane, 149 U. S., 122.
Anderson, &c., vs. Beal, 113 U. S., 227.

But the respondents contend that these sections did

not authorize the issuance of the bonds for the following reasons:

I. Because said statutes are not local and special as required by sections 1, 6 and 7 of the Constitution of North Carolina.

The conclusive answer to this is that there is not a particle of evidence of any kind to be found anywhere in the record that the payment of the interest or principal of these bonds will require a county tax to exceed the double of the State tax. But, further, under the decisions of the Supreme Court of North Carolina this constitutional provision does not affect the validity of the bonds, and in no view of the case could affect more than the method of having a valid, existing and binding obligation *paid.*

"The legislative practice has uniformly been, as far as we know, to give approval in advance, and thus confer the requisite legal authority to levy special taxes beyond the assigned limits, though, if given after the levy, it would doubtless be equally effectual" *(Cromartie vs. Commissioners,* 87 N. C. Reps., on p. 140).

And in *Herring vs. Dixon,* 122 N. C., on page 423, the Supreme Court of North Carolina again distinguishes between the power to contract a valid indebtedness without special legislative sanction and the power to levy a tax to pay said indebtedness when it says: "In *Vaughn vs. Commissioners,* 117 N. C., 429, while it was held that the commissioners could *incur a debt* for necessary expenses, without a vote of the people, it was not held that they could *levy a tax* in excess of the constitutional limit to pay it without special approval of the legislature."

So under the rulings of *Cromartie vs. Commissioners* and of *Herring vs. Dixon* the commissioners have the right to contract a valid debt without a special act,

but only the process of collecting its payment would be affected by section 6, article 5, of the Constitution.

But this argument is useless, as the record contains no evidence whatever, that the payment of this obligation by the county will require a tax exceeding double the State tax.

Subscriptions to railroads, under General Statutes similar to section 1996, have been upheld by the Supreme Court of the United States :

"Where a State law confers a general power on a county to subscribe to the stock of any railroad in the State for any amount not exceeding $100,000, the county may subscribe to the stock of two railroads $100,000 each" (*Chicot County vs. Lewis*, 103 U. S., 164).

In *Davies vs. Huidekoper*, 98 U. S., 104, the court upholds a subscription under a General Statute of Missouri almost identical in language with section 1996.

Re the "interest of the citizens of the county," and "Completion" required by the Code.

In addition to what we have already said on these subjects, we add the following :

The appellants further contend "that said sections of the Code failed to authorize the issue of said bonds, because said Railroad was not, within the meaning and proper construction of section 1996 of the Code, one in which the citizens of the County of Stanly had an interest."

Aside from the common sense of the matter, the grammatical construction of section 1996 forbids the interpretation put on it by appellants ; to wit, that, before a vote could be taken by the citizens of Stanly

County, the said citizens must have a direct pecuniary interest in the road; that is, must be stockholders in the road. The words of the statutes are "in which the citizens of the county may have an interest."

The words are not "citizens of the county may have an interest," or "certain citizens," but "*the* citizens of the county."

So, if the pecuniary interest is meant, *every citizen* of the county must have stock before a county subscription could be voted, which is a *reductio ad absurdum*. But, if this was meant, the statute should have read, "in which the citizens of the county may have interests." So that, assuming that this interest means a pecuniary interest, every citizen of the county must have stock, and that stock must be "an interest," or, in other words, that stock must constitute only one interest, one block of stock, owned in joint ownership by every citizen of Stanly County—a palpable absurdity.

It is clear that the interest spoken of is the interest that the citizens of the county might have in any public improvement.

"What else does this doctrine mean, if not that building a railroad, though it be built by a private corporation, is an act done for a public use? And the reason why the use has already been held a public one is that such a road is a highway, whether made by the government itself or by the agency of corporate bodies, or even by individuals, when they obtain their power to construct it from legislative grant" *(Olcott vs. Supervisors*, 16 Wallace, 678*)*.

Re the "completion" required by the Code.

It is also objected by the attorney for the County Commissioners, "Nor was the subscription made necessary to aid in the completion of the same" [that is, the railroad].

" No reasonable construction of this act will require that the road be aided should be actually built before the county was autorized to give it aid. That theory would, no doubt, add greately to the security of the county and would relieve it from many of the perplexing questions which so commonly arise. If, however, the road were actually built, no aid would be needed in its construction. The aid might, in that event, be useful to its stockholders, or might relieve it from embarrassments, but a road which is built can neither need nor receive aid in its construction. That is a fact accomplished " *(Kennicott vs. Supervisors*, 16 Wallace, 452*)*.

Another defense has been urged in and sustained by the State Court, to wit: That the provisions of section 1996 refer to only those roads that were *unfinished in April, 1868, the time of the adoption of the constitution of 1868.*

" This reasoning leads us to the still farther conclusion that, at the time when the act 1868-9 was brought forward in the Code, Section 1996, and the four succeeding sections, it could have had reference to no cases, except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the Constitution of 1868 " *(Commissioners vs. Snuggs*, 121 N. C., on page 403, 1897*)*.

This was first decided in 1897 and is one of the most astonishing legal solecisms into which so able a court ever fell. The statute of April 10th, 1869, section 1996 of Code, made no reference to the Constitution of 1868, nor to any other point of time in the past. Every word in section 1996, denoting tense, is in the future tense, and the Code went into effect November 1st, 1883.

It is an universal rule of construction that all statutes are prospective in their operation, unless the statute itself says to the contrary.

" No statute should be given a retrospective operation unless its words expressly require such construction " *(State vs. Littlefield*, 93 N. C., 614*)*.

What words in section 1996 require that its operation be referred back to April, 1868, fifteen years before it was re-enacted in the Code, and one year before it was ever put in any shape on the statute books of North Carolina? Upon the same false principle of construction (a principle that can find no support in any book ever written on the subject), if section 1996 should be re-enacted in the Code of 1900, it would have no application to any road that might be built during the next century, but would apply to roads incomplete in the year 1868, thirty-two years before its enactment! But this very principle has been passed on by the Supreme Court of the United States in *James vs. Milwaukee*, 16 Wall., 159. In that case a statute authorized a city to lend its credit to any railroad company incorporated and organized; and this court held that companies thereafter organized were intended to be included, and the statute was applicable to them, as well as those then in existence. This court said (pp. 160, 161):

"The defendant in error insists that the power conferred was confined to companies already in existence at the date of the act, and such was the opinion of the court below. We entertain a different opinion."

In that case, there was no word denoting the future tense, no "shall," as in section 1996, but the only words used were the adjectives, "incorporated and organized."

The cases relied on by the county's solicitors, concerning the power to tax, being conferred by special act, in answer to the contention on the part of complainants, that the commissioners had the power to issue the bonds under the sections of the Code, set out above, can have no application to a case of the kind at bar. The Supreme Court has said, in a late case, *City*

of Charlotte vs. E. D. Shepard & Co., 122 N. C., page 603, that "where such a corporation," speaking of a municipal corporation, "has thus acquired the right to create a debt, and issue the bonds, *this power carries with it*, the power to levy the taxes necessary to pay said bonds, and the accruing interest thereon (*Ralls vs. County Court*, 105 U. S., 733; *U. S. vs. New Orleans*, 98 U. S., 381).

These sections of the Code, 1996 and 1997, are as much the law of North Carolina as any other sections of the Code are; they are as much the law as the Constitution itself is. In the *Stanly County case*, the Circuit Court of Appeals, in 1899, held itself bound by the decision of the Supreme Court of North Carolina (*Commissioners vs. Snuggs*, 121 N. C., 401).

In the *Snuggs case* the Supreme Court of North Carolina upheld the sections of the Code referred to, deciding, however, that they did not apply, the road not being an unfinished road, and the citizens of the County not having an interest in the same.

Further as to Estoppel of the County by the recitals in the bonds.

In that case there was no pretense that any bondholder was a party, it being, as we contend, an *ex parte* proceeding. If any bondholder had been a party, the decision would have been different, because, in the body of the bonds issued by *Stanly County*, there was a recital that they were issued in pursuance of Sections 1996, &c., of the Code. This shows the corporate authorities acted with these provisions of the Code before them, and that they passed upon all questions left for their determination, as said by Justice BREWER in his opinion in *The Mercer County Case*, on page 601

of the volume 170 U. S. R. It shows these corporate authorities were acting in good faith, and wanted to perform their duty according to law.

On page 307, Vol. 87 Federal Reporter, in the case of *Township of Ninety-six vs. Folsom*, the Circuit Court of Appeals, speaking through Judge JACKSON, says:

"It will be observed, from the inspection of these bonds, that their recitals show upon the face of the bond a compliance with the law under which they were issued. The purchaser had a right to assume that all the conditions of the law were complied with authorizing the issue of the bonds. The question whether they were issued in compliance with the law was a question that properly belong to the authorities, who were authorized by the acts of the legislature to issue the bonds."

See further as to estoppel by the recitals in the bonds, POINT I., *supra*.

In support of the contention of appellees, that the decree heretofore entered be reversed, it is respectfully submitted that the Circuit Court was not bound by the decision of the Supreme Court of North Carolina, in the case of *Board of Commissioners vs. Snuggs*, 121 N. C., 394. We understand that the decision of the Supreme Court of the United States in *Board of Commissioners of Wilkes County vs. Coler*, 180 U. S., 506, is decisive of this. In that case, which was, upon a certificate from this Court, of certain questions, Justice HARLAN, in the concluding paragraph of his opinion, says:

" Nor do we deem it proper to express any opinion as to the scope and the effect upon the rights of the parties of sections 1996, 1997, 1998 and 1999 of the Code of North Carolina. The certified questions do not directly or explicitly relate to any question arising under those sections of the Code; and it is not appropriate that this court should, under the questions certified, consider and determine the entire merits of the case.

We answer the certified questions to this extent:

1. That the Circuit Court of the United States should have regarded the decisions of the Supreme Court of North Carolina in *Bank* v. *Commissioners*, *Commissioners* v. *Snuggs*, *Rodman* v. *Washington*, *Commissioners of Wilkes County* v. *Call*, and *Commissioners* v. *Payne*, above cited, as controlling upon the inquiry whether the legislative enactments of 1868, 1879 and 1881 were passed *in such manner* as to become, under the Constitution, *laws* of the State.

2. That the rights of the parties in this case are determinable by the law of the State as it was declared by the State court to be at the time the bonds here involved were made in the name of the county and put upon the market."

It will be seen that, in so far as this decision pertains and relates to this suit of *Board of Commissioners of Stanly County vs. Snuggs*, it sustains the opinion of Judge SIMONTON, delivered in support of the decree, entered in favor of Appellees, in the Circuit Court (See page 49 of the record, where opinion is printed in full).

Judge SIMONTON, in his opinion, takes the same view of the inquiry, whether the legislative enactments, other than the sections of the Code relied on by Complainants, were passed *in such manner as to become*, under the Constitution, *laws of the State*, that Judge HARLAN does, in his opinion, suggested above.

So that the decision of the Supreme Court, in the Wilkes case, fully sustains that of Judge SIMONTON as far as it goes, and, we think, it is to be gathered from the opinion of the Justice that, if the certified ques-

tions had "directly or explicitly related" to any questions arising under the Sections of the Code, the decision would have been in accordance with that of Judge SIMONTON in this case on the Circuit from which this appeal is prosecuted.

On page 519, 180 U. S. Reports, in the opinion of Justice HARLAN, is the following:

"In view of the cases determined by the highest court of North Carolina involving the precise point now under consideration, was the Circuit Court of the United States justified in holding the acts of 1868, 1878 and 1881 to be laws of the State? *Observe that the issue is not as to the construction, meaning or scope of a statute, but whether that which purports to be a legislative enactment ever became a law for any purpose.* May a Federal court disregard the decisions of the highest court of the State holding that such enactment, in the form of a statute, was never passed so as to become, under the State Constitution, a law?"

The above paragraph, from the opinion of Justice HARLAN, draws the distinction clearly and expressly between "*the issue as to the construction, meaning and scope of a statute*, and the issue, as to "*whether that which purports to be a legislative enactment ever became a law for any purpose.*" The Court holds that the decisions of the highest court of the State upon the question as to whether "an enactment, in the form of a statute, was ever passed, so as to become, under the State Constitution, a law," or not, are not to be disregarded.

The question here is not whether the sections of the Code relied on *were ever passed*, as required by the Constitution, so as to become *valid laws, statutes*, of the State, but whether the Circuit Court of the United States is bound by the "construction, meaning and scope of a statute," *passed as required by the Constitution, placed upon such statute*, by the highest court

of a State after the issue of the bonds, which holds invalid and void bonds, negotiable instruments, commercial securities, issued by Stanly County in good faith, put upon the market in due course of trade, purchased in open market, for value, the purchaser being unaware of any defect of authority or other irregularity on the part of the County, and there being nothing to excite *suspicion* of any defect or irregularity.

We submit, most respectfully, *that no decision of any court can be found*, which holds that the Circuit Court is bound by the decisions of the highest court of the State, so construing such a statute.

When these securities were issued, and sold in open market, reciting, in the body of every bond, these sections of the Code, as much a part of the law of the State as the Constitution itself, there had been no decision of the State Court construing the same; and the case of *Board of Commissioners vs. Snuggs*, 121 N. C. Reports, 394, was not decided until the fall of 1897, eight years after the sale of the bonds in question, and after the interest on the same had been paid by the County for years without a suggestion of repudiation.

It is to be noted that the Supreme Court, in the *case of Snuggs*, held that the Sections of the Code referred to were part of the Statute law of the State, in the following words:

"All the sections of the Code were enacted by having been read three several times in each House of the General Assembly, having passed three several readings on three different days in either House, the yeas and nays on the second and third readings having been entered on the journals of the Senate and House of Representatives, respectively."

Page 401, 121 N. C. Reports.

Justice MONTGOMERY, after using the language quoted in reference to the Sections of the Code, *puts a construction* upon the statutes, which, it is contended, renders the bonds issued as above set out void.

The question there is, in a case of this kind, when bonds were issued, and sold, as these bonds were, whether the construction put upon the statutes, the Code Section, by the Supreme Court of the State, is to be followed by the Circuit Court.

In the first place, what is the rule as laid down by the Supreme Court of the United States in that case, which all lawyers, all courts, recognize to be the leading case upon this subject (*Burgess vs. Seligman*, 107 U. S., 332):

"Where contracts and transactions have been entered into and rights have accrued thereon under a *particular state of the* decisions, or *where there have been no decision* of the State tribunals, the Federal Courts properly claim the right to adopt their own *interpretation of the law* applicable to the case, although *a different interpretation* may be adopted *by the State Courts*, after such rights were accrued" (Italics are ours).

Says Justice BRADLEY on the same page (33): "Federal Courts * * * exercise their own judgment * * * *always* * * * in reference to the doctrines of commercial law."

The rights of these parties are to be determined according to the doctrines of commercial law, it being well settled that the bonds in question are commercial securities, negotiable instruments.

We call the attention of the Court to the case of *Township of Pine Grove vs. Talcott*, 19 Wall., 666, 677. That case was an action in the United State Circuit Court upon coupons cut from bonds issued by that township in aid

of a railroad, *under an Act of the General Assembly of Michigan.* The plaintiff in error insisted that *several decisions of the Supreme Court of that State holding that the construction of railroads was not a public corporate purpose such as townships were authorized by the Constitution of Michigan to aid, and that such statute and the bonds issued in pursuance of it were void,* were controlling.

The Supreme Court of the United States, in declining to be bound by those decisions, said:

"It is insisted that the invalidity of the statute has been determined by two judgments of the Supreme Court of Michigan, and that we are bound to follow those adjudications. We have examined those cases with care. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. We think the dissenting opinion in the one first decided is unanswered. Similar laws have been passed in twenty-one States. In all of them but two it is believed their validity has been sustained by the highest local courts. It is not easy to resist the force of such a current of reason and authority. The question before us belongs to the domain of general jurisprudence. In this class of cases this court is not bound by the judgment of the courts of the States where the cases arise. It must hear and determine for itself. Here, commercial securities are involved. When the bonds were issued there had been no authoritative intimation from any quarter that such statutes were invalid. The Legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal. The general understanding of the legal profession throughout the country is believed to have been that they were valid. The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us, that end can be accomplished unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the courts of the respective States, we

should abdicate the performance of one of the most important duties with which this tribunal is charged, and disappoint the wise and salutary policy of the framers of the constitution in providing for the creation of an independent federal judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery."

Upon this question, the above seems to us decisive. Nothing can be found, in any decisions of the Supreme Court of the United States, not in accordance with the rule in this case, and it is to be noted that Justice BRADLEY, in his opinion in *Burgess vs. Seligman*, 107 U. S., on page 34, says: "As this matter has received our special consideration, we have endeavored to * * * state our views with distinctness," &c., and he cites the above case, with a great number of others decided by that Court, all in support of the rule he laid down himself.

We have called the attention of the Court more at length to this rule of the Supreme Court of the United States defining in what cases, and to what extent, the Federal Courts will follow the decisions of the highest court of the State, for the reason that his Honor, Judge GOFF, seemed to be of opinion that this court is bound by the decisions of the State Court in the case of *Board of Commissioners vs. Snuggs*, 121 N. C. Reports, 394. Justice HARLAN, as we have pointed out in this argument, shows it is only in cases where the State Court has held an enactment *is not passed in accordance with the requirements of the Constitution*, that its decision is controlling; but *here is a construction of a valid statute recited in the bond*, which this Court is asked to follow, and we have shown it is not bound by it.

It was contended in the argument here, and upon the Circuit, that the decision in the case in *The Board*

of Commissioners vs. Snuggs, 121 N. C., is a bar, a *res adjudicata* in this court against the innocent bondholders.

In the case of *Carroll County vs. Smith*, a judgment had been given in favor of the county in a State Court, between it and certain of its bondholders, and it was *held to be no estoppel on holders of bonds who were not before the court. It has also been held that they cannot be made parties, and bound by publication made for them as unknown defendants.*

Carroll Co. vs. Smith, 111 U. S., 563.
Pana vs. Bowler, 107 U. S., 544, 545.
Brooklyn vs. Ins. Co., 99 U. S., 370.
Empire vs. Darlington, 101 U. S., 92.

We have shown that this court is not bound by this decision of the State Court, and we have also shown that the decision is no bar to these complainants.

The construction of the CODE PROVISIONS by the Supreme Court of North Carolina, made AFTER the issue of the bonds in suit, is not binding on the federal court, and the bonds in suit are valid obligations in the hands of bona fide holders.

Although we have discussed this subject in the foregoing brief to some extent, yet we are so convinced of the soundness of our view, and so solicitous that the matter shall receive the attentive and thorough consideration of this court, that we feel justified in presenting the subject in all of its aspects. Accordingly

we propose to show, in further support of complainants' contentions and petition to the Court, to reverse its former ruling, in this case, that the issue of the bonds in question is authorized under Sections 1996, 1997, &c., of the Code of North Carolina, and further that they are good and valid bonds in the hands of complainants.

The Code of North Carolina is one act (Code, Section 3876), and went into operation November 1st, 1883 (Code, Section 3866).

At the end of volume 2 of the Code, at bottom of page 603, *it is declared that the requirements of Sec.* 14, Article 2, of the Constitution of North Carolina, have been complied with in the passage of the Code; and this is also admitted.

These sections of the Code have been upheld by the Supreme Court of North Carolina, in this case of *Board of Commissioners vs. Snuggs*, in 121 N. Car., as appears in a former part of this brief, from the words copied from the decision.

The following are sections 1996 and 1997 of the Code of North Carolina:

Section 1996 of the Code of North Carolina.

"The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

Section 1997 of the Code of North Carolina.

"The board of commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and, if a majority of the board shall vote for the proposition, this shall be entered upon the record, which shall show the amount proposed to be subscribed, to what

company, and whether in bonds, money or other property, and thereupon the board shall order an election, to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board of county commissioners. And, if a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the amount of stock proposed by them and submitted to the people, subject to all the rules, regulations and restrictions of other stockholders in such company or companies. Provided, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper."

The following is a copy of the bonds issued by Stanly County (see pages 7 and 8 of printed record):

COUNTY OF STANLY SIX PER CENT. BOND.

Stanly County, State of North Carolina, is indebted to the bearer in the sum of five hundred dollars, lawful money of the United States, payable on the first day of July, A. D. one thousand nine hundred and twenty, with interest thereon from the first day of July, A. D. one thousand eight hundred and ninety, at the rate of six per cent. per annum, payable on the first day of July in each year at the First National Bank of Salisbury, North Carolina, on presentation and surrender of the respective coupons hereto attached, as they severally become due and payable. This bond is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, making a total of one hundred thousand dollars, issued by authority of an Act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled "An act to amend the charter of the Yadkin Railroad Company," and of sections 1996, 1997, 1998 and 1999, of the Code of North Carolina, and authorized by a majority vote of the qualified voters of Stanly county, at an election regularly held for that purpose on the 15th day of August, A. D. 1889, duly ordered by the Board of Commissioners of Stanly county.

This series of bonds is issued to pay the subscription of one hundred thousand dollars made by Stanly county

to the capital stock of the said railroad, known as "The Yadkin Railroad Company." Stanly county reserves the privilege of paying the principal and interest of any or all of this series of bonds at any time after the expiration of ten years, upon the Board of Commissioners of said county first giving three months' notice of such payment in some newspaper published in said county, when such bonds shall be paid, according to number, beginning with number one.

In testimony whereof, the chairman of the Board of County Commissioners of Stanly county hath hereunto subscribed his name, for and on behalf of said Board, and the Clerk of the Superior Court of Stanly county hath countersigned the same and affixed thereto the seal of said Superior Court, this first day of July, A. D. one thousand eight hundred and ninety.

_____

Chairman.

Countersigned :

As before remarked, from our understanding of the opinion of his Honor, Judge GOFF, in this case, it is based upon the view of the court that it is bound by the decision of the Supreme Court in the case of *Board of Commissioners vs. Snuggs*, 121 N. C., 394, in its construction of sections 1996, 1997, 2000, which sections are among the recitals in the bonds in question. It should be remembered that, in the above case, *no bondholder was a party*, and the decision is put upon the distinct ground that the sections of the code relied on do not apply, and do not confer the power upon the corporate authorities to issue such bonds *for the sole reason that it is not shown* the citizens of the county had an interest in the bonds and that the road was an unfinished railroad.

At this point, we call the attention of the Court to the case of *Louisville, &c., Ry. Co. vs. Louisville Trust Company*, 174 U. S. R., on pages 573 and 574. Justice GRAY says :

"In *Merchants' Bank vs. State Bank*, 10 Wall., 604, this court stated as an axiomatic principle in the law of corporations this proposition: 'Where a party deals with a corporation in good faith—the transaction is not *ultra vires*—and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists. If the contract can be valid under any circumstances, an innocent party in such a case has a right to presume their existence, and the corporation is estopped to deny them.' (10 Wall., 644, 645). The proposition was supported by citations of many English and American cases, and among them *Royal British Bank vs. Turquand* (1856), 6 El. & Bl., 327. And the justices of this court, while differing among themselves in the application of the principle to municipal bonds, have always treated *Royal British Bank vs. Turquand* as well decided upon its facts. *Knox County vs. Aspinwall*, 21 Howard, 539, 545; *Moran vs. Miami County*, 2 Black, 722, 724; *Gelpcke vs. Dubuque*, 1 Wall., 175, 203; *St. Joseph vs. Rogers*, 16 Wall., 644, 666; *Humboldt vs. Long*, 92 U. S., 642, 650. And see *Zabriskie vs. Cleveland, Columbus and Cincinnati Railroad*, 23 Howard, 381, above cited."

The cases cited by Justice GRAY in the above paragraph are decided upon *municipal bonds*, and show that the principle he states applies to *contracts with municipal, as well as to other corporations;* and the late Justice MILLER, in his dissenting opinion, in the case of *Humboldt Township vs. Long*, 92 U. S. R., pages 650 and 651, says the case of *Knox County vs. Aspinwall*, 21 Howard, 539, the original case on which the rule and principles are based, is itself based upon *The Royal British Bank vs. Turquand.*

We state the above principle at this point in the argument to give emphasis to the rule that this court will so construe the *statutes* authorizing the issue of the bonds, as to uphold the validity of the same, pur-

chased in good faith, as they were, *if it can do so, under any circumstances.*"

It should be noted, and we beg the Court's special attention to the fact, that the complainants are the owners of these bonds, the innocent purchasers of the same, in open market, from these corporate authorities, sold in good faith and bought in good faith for the highest market price, in cash, and that the railroad was built, according to contract, with no suggestion from anybody, of fraud or unfairness by any one.

As this court is not bound by the construction put upon the statutes by the Supreme Court of North Carolina, what construction will it put upon them? We submit, *that one* which will uphold the bonds, issued as these bonds were, because the rule is, if, "*under any circumstances,*" they can be upheld, the Court will do it.

If an innocent bondholder had been a party to the suit in the State court, the decision, we must assume, in the *Snuggs* case, would have been in his favor *unless the court had overruled the leading and most important case upon municipal bonds ever decided in North Carolina.*

The Supreme Court in *Belo vs. Commissioners*, 76 N. C. R., 489, the leading case upon the subject of municipal bonds and the *effect of recitals in the bonds*, lays down the law as follows:

"While the decisions are very uniform that the record of the justice's court, affirming the fact of compliance with the conditions precedent to the subscription of stock is conclusive and estops the county from denying the validity of the bonds in the hands of a *bona fide* holder before maturity, *they are equally uniform in giving the same effect to the recitals in the bonds themselves*, that they had been issued in pursuance of the law which authorized their issue. The *recital is a determination of the question, and the holder has a right to rely on it (Town of Coloma vs. Evans*, 92

U. S., 484; *Knox County vs. Aspinwall*, 21 Howard, 539). Mr. Justice GRAY says: 'In the leading case of *Knox Co. vs. Aspinwall* the decision was rested upon two grounds. One of them was that the mere issue of the bonds containing a recital that they were issued in pursuance of the Legislative act was a sufficient basis for the assumption by the purchaser that the conditions on which the county was authorized to issue them had been complied with, and it was said the purchaser was not bound to look further for evidence of such compliance, though the recital did not affirm it. This position was supported by reference to the *Royal British Bank vs. Turquand*, 6 Ellis and Blackburn, in a case in the Exchequer Chamber, which fully sustains it."

The foregoing, as your petitioners aver, are the words of Justice BYNUM in a decision which has *never been departed from*. Here the Supreme Court in 1877, approved of the doctrine in the *Royal British Bank case*, upon which *Knox vs. Aspinwall* was based.

If a bondholder had been a party to the case of *Board vs. Snuggs*, it is not to be supposed that the court would have decided the case as it did. They could not without overruling *Belo vs. Commissioners*. Whether the citizens had an interest in the railroad, and whether the railroad was finished, were matters to be passed on by somebody. There was no one else to pass upon them but the board of commissioners, named in the sections. As your petitioners aver, these were conditions, and it was not for the bondholder to come and ascertain whether they are complied with or not. All he had to do was to look to the *recitals* in the bonds.

Even in the Oxford case, *Bank vs. Commissioners of Oxford*, 116 North Carolina Rep., on page 368, the first time it was before the Court, February Term, 1895, the Court say, *there being no dissent:*

"The purchaser of such coupons as those sued upon must so far act upon the notice contained in the

recitals, as a general rule, as to examine *the statutes referred to,* and ascertain, at his peril, whether the essential prerequisites to the validity of the bonds have been met, both by Legislative and popular action. *We hold that, upon a fair construction of the organic law and pertinent statutes, and their application to the facts of this case,* there *has been a sufficient compliance with the essential requirements of the law to render the election valid. We think, therefore, that the Court erred in holding that the plaintiff* was not entitled to recover, and the judgment of non-suit must be set aside and a new trial granted."

The recitals in the bonds in question, as they appear on a former page of this brief, are :

" This bond is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, issued by authority of an act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled, an ' Act to amend the Charter of the Yadkin Railroad Company,' *and of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina,* and authorized by a majority of the qualified voters of Stanly County, at an election held for that purpose, on the 15th day of August, 1889, duly ordered by the Board of Commissioners of Stanly County."

Under the decision in the Belo case, and the rule, to which the Court calls attention, in the Bank vs. Commissioners, both referred to above, the purchaser of the bonds " *had only to examine the statutes referred to,* and ascertain at his peril whether the essential prerequisites to the validity of the bonds have been met, both by Legislative and popular action."

These sections of the Code, recited in the bond, as authority for their issue, were passed by the Legislature, according to the Constitution, and there is no doubt but that there was a large majority of the votes of the County of Stanly in favor of the issue of the bonds. These things are admitted. So that the bondholder

has done all he was required to do to protect himself in the purchase of his bond.

Justice GRAY says :

" In the leading case of *Knox County vs. Aspinwall*, 21 Howard, a municipal bond case, the decision was rested upon two grounds ; one of them was that the mere issue of the bonds, containing a recital that they were issued under the Legislative Act, was a sufficient basis for the assumption *by the purchaser* that the conditions on which the County was authorized to issue them had been complied with, and it was said the purchaser was not bound to look further for evidence of such compliance, *though the recital did not affirm it.*"

These are the words of Justice GRAY, quoted in the *Belo case* by Justice BYNUM, in his opinion, as we say, in the leading case in North Carolina on municipal bonds.

Now, to apply these rules to the case at bar, what were the conditions on which the County of Stanly was authorized to issue the bonds ? One was, *when necessary to aid in the completion of any railroad*, and another was, " *of any railroad in which the citizens of the County may have an interest.*"

Here was a power, legislative in its character, recited in the bond, to be exercised under certain conditions. By whom ? The Act says the " Board of Commissioners." When the Board proceeded to act, the following order was entered, in June, 1889, on the record of the proceedings of the Board (Record, p. 22).

June Term, 1889.

Ordered, that the following proposition presented by Mr. Tho. F. Kluttz, of Salisbury, President of the Yadkin Railroad Company, be accepted. The president and board of directors of the Yadkin Railroad Company having applied to the Board of Commissioners of Stanly county to make a subscription of one hundred thousand dollars to the capital stock of the

said railroad company, and said application having been considered by the board, *and it appearing that the citizens of said county have an interest in said railroad*, it is hereby resolved and ordered by the board that the county of Stanly shall subscribe said amount of one hundred thousand dollars to the capital stock of said Yadkin Railroad Company, upon the following terms and conditions:

Said subscription shall be one hundred thousand dollars, payable in bonds of Stanly county, in denominations of five hundred and one thousand dollars each, bearing six per cent. interest per annum from the date of the delivery of said bonds to said company, the interest to be payable annually on the 1st day of July in each year; said bonds shall be deposited with the First National Bank of Salisbury, N. C., on the first day of October, 1889, or as soon thereafter as practicable, the bank to hold them and deliver the same to the said railroad company as hereinafter provided. Said bonds shall run for 30 years, with the privilege of paying the principal and interest of any or all of them at any time after the expiration of ten years, upon the Board of Commissioners of said county first giving three months notice of such payment in a newspaper published in said county, when said bonds shall be paid according to the number, beginning with No. 1, and as bonds are delivered capital stock of said company in like sum to be delivered to the county of Stanly.

An election is hereby ordered to be held at the usual voting places in Stanly county on Thursday, August 15, 1889, for the purpose of enabling the qualified voters of said county to vote for or against the said proposed subscription, those voting for said subscription shall vote a printed or written ticket with the word "Subscription," thereupon, and those voting against said subscription shall vote a printed or written ticket with the word "No Subscription" thereupon, and said election shall be held in accordance with section 1998 of the Code of North Carolina, and due notice of said election shall be given in accordance with law.

If the proposition to vote said subscription shall be ratified by a majority of the qualified voters of said county at said election, then said bonds shall be delivered to said Yadkin Railroad Company, as follows: Twenty-five thousand dollars when ten miles of said road is constructed and in operation from the Rowan county line into said county of Stanly; twenty-five thousand dollars more when said road is con-

structed and in operation from the town of Salisbury to the town of Albermarle, and the remaining fifty thousand dollars when said road is constructed and in operation from the town of Salisbury to the village of Norwood, in Stanly county ; provided, that the said railroad company shall be required to begin the construction of said road at Salisbury within ninety days from and after the first day of October, 1889, and to complete the same to Norwood within eighteen months thereafter, and if not so begun and completed, then said bonds shall not be delivered to said company ; provided, however, that the Board of Commissioners of Stanly county shall have full power and discretion to extend the time for the performance of the conditions and limitations hereinbefore mentioned.

Said railroad shall be of the standard gauge.

It is hereby ordered that an entirely new registration of voters be made for said election as provided by law."

It appears, from the above, that it appeared to the Board and it was accepted, "that the citizens of said County *have an interest in said railroad.*" There *was a railroad*, and the citizens of the County had an *interest* in it.

These were the conditions to be complied with, and some one, some authority, had to pass upon the same. It was not for the innocent purchaser of the bond to inquire as to whether the conditions were complied with, *but for the municipal authorities*, who put it upon the market, and the recital in the bond that it was issued in pursuance of the power conferred by the Sections of the Code "was a sufficient basis for the assumption by the purchaser that the conditions on which the County was authorized to issue them had been complied with" *(Belo's case, supra).*

In the argument of this case, at the last term of the Circuit Court of Appeals, we were asked by the Court if we meant to maintain that the sovereign people of the County could be estopped? *We maintain here, as we*

did there, that the *Belo case expressly so decided* in the following words:

"While the decisions are uniform that the record of the justice's court affirming the fact of compliance with the conditions precedent to the subscription of stock is conclusive and *estops the County* from denying the validity of the bonds in the hands of a *bona fide* holder, they are equally uniform in giving *the same effect to the recitals in the bonds, that they had been issued in pursuance of the law which authorized their issue*"—in this case, *the Sections of the Code recited in the bond.*

We maintain that no case can be found which holds that a municipality cannot be estopped, indeed, *all the bond cases* are decided upon that assumption.

The record of the proceedings had before the Board of Commissioners of Stanly County, printed in this brief, shows that the corporate authorities acted with the sections of the Code, recited in the face of the bond, before them, and that they passed upon all questions left for their deteimination, as said by Justice BREWER in his opinion in *The Mercer County Case*, on page 601 of the volume 170 U. S. R. It shows these corporate authorities were acting in good faith, and wanted to perform their duty according to law.

On page 307, Vol. 87, Federal Reporter, in the case of *Township of Ninety-six vs. Folsom*, the Circuit Court of Appeals, speaking through Judge JACKSON, says:

"It will be observed, from the inspection of these bonds, that their recitals show upon the face of the bond a compliance with the law under which they were issued. The purchaser had a right to assume that all the conditons of the law were complied with, authorizing the issue of the bonds. *The question whether they were issued in compliance with the law was a question that properly belonged to the authorities, who were authorized by the acts of the legislature to issue the bonds.*"

Purchasing these bonds, with the recitals they contained, was it required of the purchasers to find out whether the citizens of the county of Stanly had an interest in the railroad? Was it required of them to find out whether the railroad was completed or uncompleted? These were matters for the *corporate authorities*, and for them alone. Says Justice BREWER, in *Provident Trust Company vs. Mercer County*, 170 U. S. R., page 601:

"By a long series of decisions such recitals are held conclusive, in favor of a *bona fide* holder of bonds, that precedent conditions, prescribed by statute and subject to the determination of those county officers, have been fully complied with."

In the case of *Provident Trust Co vs. Mercer Co.*, 170 U. S., 601, it will be seen that the recitals in the bond, which is printed in the volume, are similar to those in the Stanly bonds. The *Mercer County case* is decisive in favor of the complainants.

See, also, the recent case of *Gunnison County Commissioners vs. Rollins*, 173 U. S., 255, as to recitals in bonds.

But the respondents contend that these sections did not authorize the issuance of the bonds for the following reasons:

"Because said statutes are not local and special as required by sections 1, 6 and 7 of the Constitution of North Carolina."

The conclusive answer to this is that there is not a particle of evidence of any kind to be found anywhere in the record that the payment of the interest or principle of these bonds will require a county tax to exceed the double of the State tax.

But, further, under the decisions of the Supreme Court, of North Carolina this constitutional provision does not affect the validity of the bonds, and in no view of the case could affect more than the method of having a valid, existing and binding obligation *paid.*

"The legislative practice has uniformly been, as far as we know, to give approval in advance, and thus confer the requisite legal authority to levy special taxes beyond the assigned limits, though, if given after the levy, it would doubtless be equally effectual" *(Cromartie vs. Commissioners*, 87 N. C. Reps., on p. 140*)*.

And in *Herring vs. Dixon*, 122 N. C., on page 423, the Supreme Court of North Carolina again distinguishes between the power to contract a valid indebtedness without special legislative sanction and the power to levy a tax to pay said indebtedness when it says:

"In *Vaughn vs Commissioners*, 117 N. C., 429, while it was held that the commissioners could *incur a debt* for necessary expenses, without a vote of the people, it was not held that they could *levy a tax* in excess of the constitutional limit to pay it without special approval of the legislature."

So under the rulings of *Cromartie vs. Commissioners* and of *Herring vs. Dixon* the commissioners have the right to contract a valid debt without a special act, but only the process of collecting its payment would be affected by section 6, article 5, of the Constitution.

But this argument is useless, as the record contains no evidence whatever that the payment of this obligation by the county will require a tax exceeding double the State tax.

Subscriptions to railroads, under General Statutes similar to section 1996, have been upheld by the Supreme Court of the United States:

"Where a State law confers a general power on a county to subscribe to the stock of any railroad in the

State for any amount not exceeding $100,000, the county may subscribe to the stock of two railroads $100,000 each " *(Chicot County vs. Lewis*, 103, U. S., 164*)*.

In *Davies vs. Huidekoper*, 98 U. S., 104, the court upholds a subscription under a General Statute of Missouri almost identical in language with section 1996.

Another defense has been urged in and sustained by the State Court, to wit: That the provisions of section 1996 refer to only these roads that were *unfinished in April, 1868, the time of the adoption of the constitution of 1868.*

" This reasoning leads us to the still farther conclusion that, at the time when the act of 1868-9 was brought forward in the Code, section 1996, and the four succeeding sections, it could have had reference to no cases, except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the Constitution of 1868 " *(Commissioners. vs Snuggs*, 121 N. C., on page 403, 1897*)*.

This was first decided in 1897 and is one of the most astonishing legal solecisms into which so able a court ever fell. The statute of April 10th, 1869, section 1996 of Code, made no reference to the Constitution of 1868, nor to any other point of time in the past. Every word in section 1996, denoting tense, is in the *future tense*, and the Code went into effect November 1st, 1883.

It is an universal rule of construction that all statutes are prospective in their operation, unless the statute itself says to the contrary.

" No statute should be given a retrospective operation, unless its words expressly require such construction *(State vs. Littlefield*, 93 N. C., 614*)*.

What words in section 1996 require that its operation be referred back to April, 1868, fifteen year be-

fore it was re-enacted in the Code, and one year before it was ever put in any shape on the statute books of North Carolina? Upon the same false principle of construction (a principle that can find no support in any book ever written on the subject), if section 1996 should be re-enacted in the code of 1900, it would have no application to any road that might be built during the next century, but would apply to roads incomplete in the year 1868, thirty-two years before its enactment! But this very principle has been passed on by the Supreme Court of the United States in *James vs. Milwaukee*, 16 Wall., 159. In that case a statute authorized a city to lend its credit *to any railroad company incorporated and organized;* and the court held that *companies thereafter organized* were intended to be included, and the statute was applicable to *them*, as well as *those then in existence.* The court said (pp. 160, 161):

"The defendant in error insists that the power conferred was confined to companies already in existence at the date of the act, and such was the opinion of the court below. *We entertain a different opinion.*"

In that case, there was no word denoting the future tense, no "shall," as in section 1996, but the only words used were the adjectives, "incorporated and organized."

The cases relied on by the county's solicitors, concerning the power to tax, being conferred by special act, in answer to the contention on the part of complainants, that the commissioners had the power to issue the bonds under the sections of the Code, set out above, can have no application to a case of the kind at bar. The Supreme Court has said, in a late case, *City of Charlotte vs. E. D. Shepard & Co.*, 122 N. C., page

603, that " where such a corporation," speaking of a municipal corporation, " has thus acquired the right to create a debt, and issue the bonds, *this power carries with it*, the power to levy the taxes necessary to pay said bonds, and the accruing interest thereon " *(Ralls vs. County Court*, 105 U. S., 733; *U. S. vs. New Orleans*, 98 U. S., 381*)*.

These sections of the Code, 1996 and 1997, are as much the law of North Carolina as any other sections of the Code are ; they are as much the law as the Constitution itself is.

In the *Charlotte* (North Carolina) *Daily Observer*, February 3, 1898, is an able article by LINDSAY PATTERSON, Esq., entitled " Stanly County Bond Case, in which he attacks and demolishes the doctrine of the Supreme Court of North Carolina that the act of April 10, 1869, Code, sections 1996 to 2000, authorized the issue of County bonds only in cases where the railroad in question had been begun before the adoption of the constitution in 1868. The same writer shows that is also true that in order that these sections of the Code authorize the issue of bonds, the railroad need not have been begun before April 10, 1869, when the matter of these sections was first enacted. We reprint the said article substantially in full as an Appendix to this brief, and submit to the respectful consideration of this court that the conclusions therein stated and the argument in support thereof are sound. We

adopt these as our own, and make them part of this brief. We can see no escape from them.

The decree of the Circuit Court should for the foregoing reasons be affirmed.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel for Appellees.

APPENDIX TO BRIEF.

Argument and Views of Lindsay Patterson, Esq.

STANLEY COUNTY BOND CASE.

DECISION OF THE SUPREME COURT.

A Review of a Case That Embodies Principles of Far-Reaching and Dangerous Effects. If the Decision Stands It will Destroy the Fundamental Principles of Popular Government. The Courts Can Construe Statutes, But Have No Right to Radically Change Them.

TO THE EDITOR OF THE "OBSERVER":

The decision of the Supreme Court of North Carolina, which holds that the ratification of an act of the General Assembly can be inquired into in a collateral way, seems to be sustained by a long array of authorities, although there are decisions of the highest Courts in some of the States that hold the opposite. But whether sustained by the weight of authority or not, which matter is not germane to the present discussion, the principle on this point, as enunciated in the case of the town of Oxford and in the Stanly county case, must be accepted as the law in this State until it is changed by this or some subsequent court.

But the decision in the Stanly county case embodies principles much more far-reaching and dangerous in their effects than the mere declaration that the Supreme Court has a right to inquire whether the constitutional provisions have been complied with in the passage of an act by the General Assembly.

It was admitted that The Code was properly passed, and so, even, if the special acts incorporating railroad companies are not properly passed, my position is that

the issuance of bonds by the counties is valid under sections 1996 to 2000 of The Code.

The attempted repudiation of hundred of thousands of dollars of honest debts by certain counties of the State has aroused public sentiment, and very rightly; for every citizen in the State has an interest in the matter, and many citizens of the State have direct pecuniary interest in it.

The constitution of 1868 was ratified in April, 1868. Article V, section 5, thereof, reads as follows: "And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon."

Twelve months thereafter, on April the 10th, 1869, the General Assembly, composed of a different body of men, passed an act, the first section of which reads as follows:

SECTION 1. "The General Assembly of North Carolina do enact: That the county commissioners of the several counties in this State shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

The other sections refer to the manner in which the elections shall be held and to other matters. There is absolutely no reference in the act to the constitution. It is not mentioned. The act has no more reference to the constitution of 1868 than it has to the constitution of the United States, adopted one hundred years ago. This act of the General Assembly was never repealed but was brought forward as sections 66 to 70 of chapter 99 of *Battle's Revisal*, in the following language: Section 66: "The county commissioners of the several counties in this State shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." And this enactment went into effect January 1st, 1874.

It was again brought forward as sections 1996 to 2000 of The Code and went into effect November 1st, 1883, in the following language: Section 1996. "The boards of commissioners of the several counties shall

have power to subscribe stock to any railway company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." And there has not been a day since April 10, 1869, that this statute has not been a living, vital statute of the State. Three General Assemblies of the State thus passed on it and saw no need of clearing up any ambiguities in it.

These Assemblies in substance said :

" We say what we mean and mean what we say."

These General Assemblies knew the condition of affairs in 1869, and in 1873, and in 1883, just as well, if not better, than those of the present generation. What does the Supreme Court say about these sections in The Code. It says : " This reasoning leads us to the still further conclusion that at the time when the act of 1868 and 1869 was brought forward in The Code, section 1996, and the four succeeding sections, it could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868, and that therefore The Code sections could not apply to the present case, because the Yadkin Railroad was not begun to be constructed until about 1889."

This conclusion, as I contend, is absolutely unwarranted and is against every known principle of statuetory construction. So this statute is in effect reenacted by the Supreme Court and made to read as follows :

" The boards of commissioners of certain counties shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the county had a pecuniary interest at the time of the adoption of the constitution of 1868."

Now, this conclusion of the court necessarily involves three propositions, none of which can be sustained.

FIRST. That the statute of April, 1869, was retroactive in its effect and acted back twelve months to the time of the adoption of the constitution. The statute reads : " The county commissioners of the several counties shall have power to subscribe stock." There is absolutely no reference to the constitution in this act. The words of the act are prospective, and it is a universal principle of construction that all statutes shall be prospective in their operation and not retrospective, unless the statute itself expressly says to the contrary.

SECOND. This holding or conclusion necessarily involves the denial of the right of the General Assembly to bring forward or re-enact a statute that has for many years been on the statute books. This statute was as much re-enacted by Battle's Revisal, and again by the Code of 1883, as if it had never before been on the statute books of the State. There has not been a day since April 10th, 1869, when it has not been a living, vital statute, and I contend, if work should begin on any railroad in the State to-day, that under this statute, the county could on to-morrow, vote a subscription, under section 1996 of The Code. The very words of the statute look to the future; and, if they did not, every rule of construction would make them apply to any unfinished road in the future.

Battle's Revisal and the Code of 1883 provide that all public acts not therein included are repealed; but, if this construction stands, then the re-enactment of said statute in the Revisal and The Code amount to nothing, and, whether left out or put in these Codes, the act is repealed anyhow.

THIRD. This conclusion involves the further proposition that our Supreme Court can make a law as well as construe one already made. The Court strikes out the words "citizens of the county, and inserts in lieu thereof the word "county." It interpolates the word "pecuniary" before the word "interest," and adds the words "at the time of the adoption of the constitution of 1868."

This stretch of judicial power cannot be sustained. Under our form of government, the courts can construe statutes, but they have no right to radically change them.

Justice RODMAN lays down the true rule when he says: "But to add limiting or qualifying words is not in general permissible, or except for very strong reasons when the words used contained an intelligible description of the object." Now here is a statute as plain as it can be made. There is no confusion in its words; no ambiguity in its meaning. It is a plain, lucid statute. What right has the court to change it? It is contended that because the constitution, in speaking about the powers of the State in lending its credit, used the words "direct pecuniary interest," and "at the time of the adoption of this constitution," it must follow that these words must be put into this statute.

It is admitted that the convention intended to insert the words into the constitution, and this intent was made manifest by the convention's taking pains to in-

sert them. But it is equally clear that the General Assembly in April, 1869, intended not to insert them, for it took pains to leave them out. Two other General Assemblies took pains to leave them out, but the highest court says that they must go in. What was the necessity of putting them in? No known rule of construction required it or even allowed it. In the brief of the counsel for Stanly county is found this language: "It is also referred to to emphasize what has already been insisted upon, that the constitutional provision of 1868, and the acts of 1868-9 (sections 1996 *et seq.*), were only intended to apply to railroads existing at that date, in view of the extraordinary conditions of that period. They were left in the constitution of 1875 and brought forward in The Code evidently by inadvertence."

The mere statement of such a proposition so appals the intellect that its scope cannot be at once comprehended. The court does not adopt this principle in so many words, but it does in substance, when it says, "It could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868," and so this section 1996 is meaningless—inserted by inadvertence.

If the courts of our State have the constitutional power to say statutes are left in our Code by inadvertence, it has no equal power to say, as the counsel contended above, that provisions in the constitution of the State were inserted by inadvertence, and an equal power to say that provisions were left out by inadvertence, and an equal power to say that the entire body of the constitution and statutory law of the State is a mere inadvertence. And thus popular government, as it has heretofore been understood, ceases.

But section 1996 itself contains the strongest proof that it was not inserted in the Code of 1883 by inadvertence, but that it was inserted designedly.

Section 1 of the original act and section 66 of Battle's Revisal read: "The county commissioners of the several counties in this State shall have power," etc. But, when The Code commissioners and the General Assemby of 1883 came to insert this provision in The Code of 1883, they made section 1996 read as follows: "The board of commissioners of the several counties shall have power, etc." Section 705 of The Code provides: "All actions or proceedings by or against a county in its corporate capacity shall be in the name of the board of commissioners of the county. So that,

so careful was the General Assembly of 1883 to give to this statute a present and future vitality, that it takes pains to change "The county commissioners" to "The boards of commissioners," a more correctly legal and technical expression. And it further drops out the words "in this State," all of which shows that the former statute underwent a searching examination.

By its insertion in this Code, this section took effect on November 1st, 1883, and, being prospective in all of its terms, it is in force to-day, and will so remain until repealed, giving a present power to any county of the State to subscribe stock to any railroad unfinished at the time of the subscription. But it can easily be shown that the construction put on this section 1996 by the court is wrong, when tested by every rule of law and of grammar.

It is an established rule of law that, when there is any doubt about the meaning of a statute, resort can be had to the title. The title to the act of April 10th, 1869, now section 1996 of The Code, is as follows:

"An act to authorize the several counties of the State to take stock in railroad companies," making it plain that this is a general act to apply to all counties of the State. Had it meant to limit the provision to those counties which already had stock in the roads to be completed, it would have said "an act to authorize certain counties," and section two of the act, now section 1997 of The Code, reads: "The commissioners of any county." If the view of the court is correct it should read "of any such county."

And section 1996 further says: "in which the citizens of the county may have an interest." If the court must interpolate the word "pecuniary" before "interest," then the logical result is that every citizen of the county must have stock in the road before a subscription can be voted, for it does not say: "in which certain citizens or in which citizens may have an interest," but "in which the citizens of the county may have an interest." But if this is meant, and a pecuniary interest is meant, then the statute should read "in which the citizens of the county may have interests;" for it is not to be supposed that all the citizens of a county could own a block of railroad stock in joint ownership." And the statute reads, "may have an interest," the constitution says in which the State "has a direct pecuniary interest." "May have" evidently refers to the future, yet the illogical position is taken that before a county can subscribe stock to a railroad company the county must already have had in-

vested in stock in the road with the loose surplus that so many counties of the State had at the close of the war, and now have. How did counties then, and how do they now, have pecuniary interests in railroad companies? By voting bonds and taking stock, not by making an independent investment in the stock first, and then voting bonds. But it is said that this construction is necessary in view of the extraordinary conditions of the period of 1868–9.

Were there not as many unfinished roads in the State in 1873 and 1883 as in 1868, and are there not as many or more in the year 1897? In its definition of the word completion the Court says: "We cannot see why the word completion should be thought to have been used by the legislators in any other sense than the one most usual and natural." But when the Court comes to define the word "interest" it abandons the most usual and natural sense and interpolates the word "pecuniary" before it, and gives it an unusual and unnatural meaning. Why did the framers of the constitution take pains to use the words "direct pecuniary interest?" Because they knew the use of the word "interest" alone carried with it a meaning broader than they intended. And what is the result of this faulty and illogical course of reasoning? Hundreds of thousands of dollars are repudiated, deserving persons are impoverished, the good name of the State is lost. I do not believe this reasoning can stand the test of time. I am further led to this conclusion by the fact that this construction of section 1996 is not adverted to in the concurring opinions of Justices CLARK and FURCHES, nor in the dissenting opinion of Chief-Justice FAIRCLOTH.

These bonds were in the hands of innocent purchasers before this change in the statute. It seems to involve such a change in the statute as to impair the obligations of a contract, and the Supreme Court of the United States has decided that the constitutional provision against the enactment of such laws by States applies also to an impairment by State judicial decisions. If this case ever reaches this highest judicial tribunal, it can well repeat the words used by it in a well-known case, involving the validity of municipal bonds:

"We shall never immolate truth, justice and the law because a State tribunal has erected the altar and declared [decreed] the sacrifice."

LINDSAY PATTERSON.

Supreme Court of the United States,

OCTOBER TERM, 1901.

No. 585.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. SNUGGS, County Treasurer of Stanly County,

Petitioners,

vs.

W. N. COLER & COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI.

Brief for Respondents.

CHARLES PRICE,
Of Counsel for Respondents.

In answer to the petition and brief for petitioners, we submit the following:

It is insisted by the petitioners that this Court should grant its writ of *certiorari* to the Circuit Court of Appeals, in this suit, because of a conflict between the decisions of the Supreme Court of North Carolina and the Circuit Court of Appeals.

We will observe, in reference to this contention, one of the peculiarities of this litigation has been, from the

beginning, that this suit has been treated by the County as if it was one prosecuted against the corporate authorities, to prevent the issue and sale of bonds by a county proposing to issue and sell the same without the power to do so.

The action prosecuted in the State Court, by the County of Stanly, was one, by the "Board of Commissioners of Stanly County and James P. Nash and G. R. McCain, citizens, against I. W. Snuggs." It was begun to prevent him from paying over to the owners of the bonds the interest due them, in performance of his trust. In the complaint and answer, to be found on pages 16 and 22 of the printed record, it will be seen that no mention is made of the sections of the Code of North Carolina, 1996, 1997, etc., recited in the bond. But, that the only ground *alleged* for holding that the bonds were void, was the fact, that, in the enactment of Chapter 183, of the Acts of 1887, providing for subscriptions by counties, etc., and Chapter 236 of the Acts of 1870, the ayes and nays were not entered on the journals of the respective branches of the Legislature, as required by the Constitution of the State.

It is plain to be seen that this proceeding in the State Court was a collusive one. No bondholder was a party, and nowhere in the pleadings, in said action in the State Court, is there any copy of the bond, or any copy of the recitals it contains (see Judge SIMONTON's Opinion, on Circuit, page 45, Printed Record). Says Judge SIMONTON, speaking of the action in the State Court: "The parties, plaintiff and defendant, to this suit were practically one."

On page 54 of the printed record is to be found the petition on appeal in this suit, signed by the defendant

I. W. Snuggs, the same, who was defendant in the action in the State Court. In this petition this defendant sets forth the fact, that he "is aggrieved by the decree of the Circuit Court" of the United States, and he has prosecuted the appeal ever since, and is now prosecuting this petition for a writ of *certiorari*.

In the *opinion* of the Supreme Court of North Carolina, on page 32 of the record, is to be found a discussion by the Justice who delivered the opinion of the Court of the Sections 1996, 1997, etc., of the Code. In this opinion the decision is put on the ground that the railroad was not an "unfinished road," and it did not appear that the citizens of the county had an interest in it. In this reference to the Code sections the Judge says: "But the defendant, for his protection, presents the view" that, under "Sections 1996, 1997, etc., of the Code," the commissioners had the power to issue the bonds.

These corporate authorities, before ordering the election in the County of Stanly, had passed upon these very questions—*the existence of the road* and the *the interest of the citizens of the county in the same.*

On page 19 of the record, in the "Exhibit June Term, 1889," is the following: "It appearing that the citizens of said county have an interest in said railroad." Then, first, here was a railroad to be completed, and, second, here was the fact that the citizens of the county have an interest in the railroad. These facts were found and put on the record by the very people, *corporate authorities*, who are now, after having secured the railroad, trying to repudiate this debt.

Having entered *these facts of record*, before ordering the election, before issuing the bonds, they came

into court, in answer to a suit of the innocent bondholder, and say the bond is void, because there was not a *road to be finished*—to be completed—and it was not so—not true—that the citizens of the county *have an interest in the railroad.* Note, these were the *same parties who were plaintiffs in the action in the State court,* the same *persons,* and the *citizen,* Nash, joined as plaintiff, in the State Court, was the Chairman of the Board of Commissioners. Although they, the said plaintiffs in the action in the State court, had, *before ordering the election,* acting under these sections of the Code, *found and entered of record,* in the order (Exhibit), on pages 19 and 20, of the record, the following: "And, it appearing that the citizens of said county have an interest in said railroad," etc., they contend here, in this suit, brought by innocent bondholders, that it was not true the citizens of the county had an interest in the railroad, or might have such interest. Suppose it had been required of an innocent bondholder, for value, to have made inquiry as to whether the corporate authorities had exercised the power conferred on them by Section 1996 of the Code in the manner and upon the conditions therein provided, and, in the prosecution of that inquiry, they had examined the record of the proceedings of the board, as printed on pages 19 and 20 of the record, is it possible that the Court, after the purchase of the bonds, as these bonds were purchased, would permit these *same corporate authorities* to say, in defense of the bondholders' suit, that what they had entered on the record was not true?

If a bondholder had been a party to the suit in the State Court, and the recitals in the bonds had been called to the attention of the Court, together with the

fact that the corporate authorities had passed upon the conditions of Section 1996 of the Code—to wit, the completion of the railroad—and the interest of the citizens in the same, both being entered of record in the first instance; and further, if the case of *Belo vs. Commissioners of Forsyth County* had been called to the attention of the Court, the decision would have been, we must think, in favor of the validity of the bonds.

In the light of these facts, how can the human mind escape the impression that this action in the State Court was a collusive one? In view of all this, we submit that there is no conflict between the decision of the Supreme Court of North Carolina and that of the Circuit Court of Appeals.

It is not to be supposed that the Court would have overruled the leading case in North Carolina, on the subject of municipal bonds (*Belo vs. Comms.*, 76 N. C. Reps., 487-490), if it had been called to its attention; and, if these entries upon the record of the board, together with a copy of the bond showing the recitals, had been also called to its attention.

In the above we have shown that there is no conflict between the decision of the Circuit Court of Appeals and that of the Supreme Court of the State. It is to be observed if there was, it being in regard to the construction of a valid statute, authorizing the issue of negotiable paper, it is not such a conflict as is contemplated in the case of *Forsythe vs. Hammond*, 166 U. S., 506. The construction of this *valid statute* by the Supreme Court of North Carolina, in a suit where the parties, plaintiff and defendant, as said by Judge SIMONTON, were "practically one," declaring void bonds issued in good faith, in due course of

trade, and purchased in good faith in open market, for value, where no bondholder was before the Court, years after the issue and sale of the bonds, and after the interest had been paid regularly for five years, is not such as the Courts of the United States will follow, especially when that construction is to overrule the leading case in North Carolina on municipal bonds, *Belo vs. Comms.*, 489-493, N. C. Reps.

In the history of these conflicts of opinion and judgment, as said by defendants' solicitors in their brief, there is also to be noted the fact that, in the first place, this suit was argued before Judge SIMONTON on the circuit, who, in an unanswerable argument, upheld the bonds, finding ample power under Section 1996, etc., of the Code, for their issue *(see Record, page 42)*. Upon appeal from the decree of this Judge, the same was reversed ; but, upon a rehearing and a reargument, the Circuit Court of Appeals receded from its former decision and affirmed the decree of Judge SIMONTON, Judge GOFF dissenting. Judge MORRIS, who sat in the first argument and hearing in the Circuit Court of Appeals, wrote the leading opinion of the Court upon the rehearing, and we call attention to his opinion on page 83 of the printed record.

The ground upon which the first decision was based was that the Court was bound to follow the decision of the State Court, as the Court had only construed its own State's statutes. When the last argument was made before the Court, it being upon the rehearing, the Supreme Court of the United States had decided the questions propounded in the *Wilkes bond case, 180 U. S., 506*, in many respects similar to these presented by this record ; and, indeed, it was largely upon the principles laid down in the decision in that case, Justice

HARLAN delivering the opinion, that the *final decision* of the Circuit Court of Appeals is based.

One thing we observe, in the opinion of Justice HARLAN, in the *Wilkes case*, is, that in so far as it goes, it affirms the decision, the principles, of the Stanly case, the one now under consideration, as rendered and laid down by Judge SIMONTON, on the Circuit, printed in this record. It was decided by Judge SIMONTON, in this case, that the decision of the State Court upon the question of whether the requirements of the Constitution were complied with in the passage of a statute will control in the Federal tribunals. In this Justice HARLAN sustains the decision.

It was decided by Judge SIMONTON, in the same case, that the Federal Courts are not controlled by the construction put upon a *valid statute*, which construction declares void bonds issued under such statute years *before that construction was put upon the same.* In this he was supported by Justice HARLAN'S decision in the *Wilkes* case.

It was decided by Judge SIMONTON in the *Stanly case* that the rights of the parties in the case were determinable by the law of the State as it was in the State at the time the bonds here involved were made and put upon the market by the county.

In this he was expressly sustained by Justice HARLAN in the opinion in the Wilkes case *(Wilkes County vs. Coler*, 180 U. S., 506*)*.

The first decision of the Circuit Court of Appeals in this case, Judge GOFF delivering the opinion upon the principal questions discussed, affirms Judge SIMONTON, and he is reversed only upon his construction of the sections of the Code—a valid statute—in the following

words, as they are contained in Judge GOFF's opinion, to wit:

"But it also held that under sections 1996-2000 of the Code of North Carolina, the county commissioners had the power to subscribe for and issue the bonds, notwithstanding the fact that the proposed railroad had not then been begun, and though the citizens of the county had not any direct interest in it. This ruling of the court below is opposed to the construction put upon those sections of the North Carolina Code by the supreme court of that State, and, considering the facts connected with this controversy, we take the construction of that court as the ruling to be followed by us at this time."

Here was a clear misconception of the rule which obtains in the Federal Courts, as laid down by Justice HARLAN, and in many cases decided by the Supreme Court.

In view of this, as said by Judge MORRIS, in his opinion (the other questions presented by the record being principally argued at the first hearing), upon the rehearing, and after Justice HARLAN, in the *Wilkes decision*, had distinctly called attention to the rule, that in the construction of a *valid* statute of a State by the highest Court, the Courts of the United States are not bound, the Court receded from the former decision.

So that, in fine, Judge GOFF's decision in the respect in which it overrules Judge SIMONTON'S, is, itself, overruled by the Supreme Court of the United States, in the Wilkes County decision, *supra*. It is to be noted, that, in certifying the questions in the Wilkes case to the Supreme Court, the petition to rehear, was ordered to await the decision of that Court, upon the questions certified (see Record, page 80).

In the next place we observe, in the brief filed by petitioners, that the counsel have not been able to find elsewhere than in the brief of Mr. PRICE and Judge

BOYD's opinion, the rule that the Court will uphold bonds issued as these bonds were, if, under any circumstances, it can do so.

This is why we commend the greatest opinion ever delivered by the Supreme Court of North Carolina, on the subject of municipal bonds, to the counsel. (*Belo vs. Comms. of Forsyth County*, 76 N. C. R.).

In that opinion is the following:

"While the decisions are very uniform that the record of the justice's court, affirming the fact of compliance with the conditions precedent to the subscription of stock is conclusive, and estops the county from denying the validity of the bonds in the hands of a *bona fide* holder before maturity, they are equally uniform in giving the same effect to the recitals in the bonds themselves, that they had been issued in pursuance of the law which authorized their issue. The recital is a determination of the question, and the holder has a right to rely on it. *Town of Coloma vs. Evans*, 92 U. S., 484. *Knox County vs. Aspinwall*, 21 Howard, 539. Mr. Justice GRAY says: 'In the leading case of Knox vs. Aspinwall, the decision was rested upon two grounds. One of them was that the mere issue of the bonds containing a recital that they were issued in pursuance, of the legislative act, was a sufficient basis for the assumption by the purchaser, that the conditions on which the county was authorized to issue them had been complied with, and it was said the purchaser was not bound to look further for evidence of such compliance, though the recital did not affirm it. This position was supported by reference to the Royal British Bank vs. Turquand, 6 Ellis and Blackburn, in a case in the exchequer chamber, which fully sustains it."

The foregoing are the words of Justice BYNUM, in a decision which has never been departed from. Here the supreme court, *in 1877*, approved of the doctrine in the Royal British Bank case, upon which Knox vs. Aspinwall was based.

So *our own Court, in a municipal bond case*, approves of what is said in the case of the *Royal British Bank vs. Turquand.*

In *Louisville, &c., Ry. Co. vs. Louisville Trust Company*, 174 U. S., on pages 573 and 574, Justice GRAY says:

"In *Merchants' Bank vs. State Bank*, 10 Wall., 604, this court stated as an axiomatic principle in the law of corporations this proposition: 'Where a party deals with a corporation in good faith, the transaction is not *ultra vires*, and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists. If the contract can be valid under any circumstances, an innocent party in such case has a right to presume their existence, and the corporation is estopped to deny them.' 10 Wall., 644, 645. The proposition was supported by citations of many English and American cases, and among them *Royal British Bank vs. Turquand* (1856), 6 El. & Bl. 327. And the justices of this court, while differing among themselves in the application of the principle to municipal bonds, have always treated *Royal British Bank vs. Turquand* as well decided upon its facts. *Knox County vs. Aspinwall*, 21 Howard, 539, 545; *Moran vs. Miami County*, 2 Black, 722, 724; *Gelpecke vs. Dubuque*, 1 Wall., 175, 203; *St. Joseph vs. Rodgers*, 11 Wall., 644, 666; *Humboldt vs. Long*, 92 U. S., 642, 650. And see *Zabriskie vs. Cleveland, Columbus and Cincinnati Railroad*, 23 Howard, 381, above cited."

The cases cited by Justice GRAY in the above paragraph are decided upon *municipal bonds*, and show that the principle he states applies to contracts with municipal as well as with other corporations; and the late Justice MILLER, in his dissenting opinion in the case of *Humboldt Township vs. Long*, 92 U. S.,

pages 650 and 651, says, the case of *Knox County vs. Aspinwall*, 21 Howard, 539, the original case, on which the rule and principles are based, is itself based upon *The Royal British Bank vs. Turquand.*

Every case cited by Justice GRAY is a case upon municipal bonds. We respectfully commend to our brethren the careful perusal of these cases, and especially the dissenting opinion of Justice MILLER in the case of *Humboldt Township vs. Long*, 92 U. S., 650, 651.

Again, we find in looking over the brief of the learned counsel, in support of their petition for *certiorari*, that it is devoted to a discussion of the meaning of the words, "Any railroad, in which the citizens of a county may have an interest," and also the meaning of the word "completion," as written in Section 1996 of the Code.

We call the attention of this Court to the discussion of this section of the Code by Judges SIMONTON, MORRIS and BOYD, in their respective opinions, all printed in the record in full.

It is not denied that Sections 1996, 1997, 1998, etc., of the Code of North Carolina, are as much a part of the statute law of North Carolina, as any other part of the Code is.

Section 1996 of the Code is as follows:

"1996. The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

THE RECORD OF THE COUNTY COMMISSIONERS of Stanly County is as follows:

"June Term, 1889.

"Ordered, that the following proposition presented by Mr. Tho. F. Kluttz of Salisbury, president of the Yadkin Railroad Company, be accepted. The president and board of directors of the Yadkin Railroad Company having applied to the board of commissioners of Stanly county to make a subscription of one hundred thousand dollars to the capital stock of the said railroad company, and said application having been considered by the board **and it appearing that the citizens of said county have an interest in said railroad,** it is hereby resolved and ordered by the board that the county of Stanly shall subscribe said amount of one hundred thousand dollars to the capital stock of said Yadkin Railroad Company, upon the following terms and conditions:

Said subscription shall be one hundred thousand dollars, payable in bonds of Stanly county, in denominations of five hundred and one thousand dollars each, bearing six per cent. interest per annum from the date of the delivery of said bonds to said company, the interest to be payable annually on the 1st day of July in each year; said bonds shall be deposited with the First National Bank of Salisbury, N. C., on the first day of October, 1899, or as soon thereafter as practicable, the bank to hold them and deliver the same to the said railroad company as hereinafter provided. Said bonds shall run for 30 years, with the privilege of paying the principal and interest of any or all of them at any time after the expiration of ten years, upon the board of commissioners of said county first giving three months' notice of such payment in a newspaper published in said county, when said bonds shall be paid according to number, beginning with No. 1, and as bonds are delivered capital stock of said company in like sum to be delivered to the county of Stanly.

An election is hereby ordered to be held at the usual voting places in Stanly county on Thursday, August 15, 1899, for the purpose of enabling the qualified voters of said county to vote for or against the said proposed subscription, those voting for said subscription shall vote a printed or written ticket with the word "Subscription," thereupon, and those voting against said subscription shall vote a printed or written ticket with the word: "No subscription"

thereupon, and said election shall be held in accordance with section 1998 of the Code of North Carolina, and due notice of said election shall be given in accordance with law.

If the proposition to vote said subscription shall be ratified by a majority of the qualified voters of said county at said election, then said bonds shall be delivered to said Yadkin Railroad *County*, as follows: Twenty-five thousand dollars when ten miles of said road is constructed and in operation from the Rowan County line into said county of Stanly; twenty-five thousand dollars more when said road is constructed and in operation from the town of Salisbury to the town of Albemarle, and the remaining fifty thousand dollars when said road is constructed and in operation from the town of Salisbury to the village of Norwood, in Stanly county; provided, Salisbury to the village of Norwood, in Stanly county; provided that the said railroad company shall be required to begin the construction of said road at Salisbury within ninety day from and after the first day of October, 1889, and to complete the same to Norwood within eighteen months thereafter, and if not so begun and completed, then said bonds shall not be delivered to said company; provided, however, that the board of commissioners of Stanly County shall have full power and discretion to extend the time for the performance of the conditions and limitations hereinbefore mentioned.

Said railroad shall be of the standard g*uage*.

It is hereby ordered that an entirely new registration of voters be made for said election as provided by law (see pages 19 and 20 of the Record).

The following is the copy of the bond:

"*County of Stanly Six Per Cent. Bond.*

"Stanly County, State of North Carolina, is indebted to the bearer in the sum of five hundred dollars payable, * * * &c., &c. This bond is one of a series of eighty of the denomination of one thousand dollars each and forty of the denomination of five hundred, making a total of one hundred thousand dollars, issued by authority of an act of the General Assembly of North Carolina, ratified the third

day of March, A. D. 1887, *entitled* An act to amend the charter of the Yadkin Railroad Company, *and of sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*, and authorized by a majority of the qualified voters of Stanly county, at an election regularly held for that purpose on the 15th day of August, A. D. 1889, duly ordered by the Commissioners of Stanly County.

"This series of bonds is issued to pay the subscription of one hundred thousand dollars made by Stanly county to the capital stock of the said railroad known as 'The Yadkin Railroad Company,' * * * &c., &c.

"In testimony whereof the chairman of the Board of County Commissioners of Stanly County hath hereunto subscribed his name for and on behalf of said board and the clerk of the superior court of Stanly county hath countersigned the same and affixed thereto the seal of said superior court this fourth day of July A. D. 1890."

We present at this point in the argument Section 1996 of the Code, and the record of the Board of Commissioners, and the bond, to show that, at the time the election was ordered and held and the bond issued, the board was acting under the sections of the code and doing what its members thought was their duty.

We do not notice anywhere in the brief of the counsel for the county of Stanly any explanation of this record.

When we see the importance attached to this by Judges MORRIS and BOYD in their able, and we may say conclusive, arguments, this omission in the brief of the other side seems strange to us.

When the corporate authorities of Stanly County came to act, they had before them this section of the Code.

They saw that section of the Code had to be construed, and they had to make a record of their acts.

It certainly conferred a *power* upon the Board, because its language is: "The Board of Commissioners of the several counties *shall have power* to subscribe stock to *any railroad company or companies*, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

The Board undertook to exercise this power conferred, and construed it to mean what it said it meant; that is, it gave *power* to subscribe to *any* railroad company, whether that company was in existence then or not.

Not only that, but it gave power to subscribe to the stock of such company, when necessary to aid in the completion of *any* railroad, in which the citizens of the county may, at any time, have an interest, no matter whether the railroad had been begun or not. It was any company—*any* railroad.

This was their construction of the section, and they *put it down on the record, and found, as a fact, that* "*the citizens of the county have an interest in said railroad*," using the language of the statute, *showing they had it before them, and were acting under it.*

Now, in the face of this record, and of the recital in the bond of this power, these sections and of a vote of a majority of the qualified voters of Stanly County, these same officers come and say they did not have the power, because the citizens of the county had no interest in the railroad, and it was not *what they said it was, for the completion of the same.*

What reason can be given for such conduct?

Why look into the books for meanings and definitions of words used in the statute, when the board, acting under the statute, have construed the same *and put that construction on record?*

This is a suit by an innocent bondholder, and it is useless to argue further as to what his rights are.

It is to be noted that the positions taken in other briefs filed in this case in the Circuit Court of Appeals, and in those filed by permission of the Supreme Court of the United States, when the *Wilkes case* was argued, are abandoned, or many of them are.

This case has been fully considered, fully argued, and we respectfully submit that the petition should be denied.

CHARLES PRICE,
Of Counsel for Respondents.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 264.

Supreme Court U.S.
FILED
APR 16 1903
JAMES H. McKENNEY,
Clerk.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. SNUGGS, Treasurer of Stanly County,

Petitioners,

vs.

W. N. COLER & COMPANY,

Respondents.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR RESPONDENTS.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel.

C. G. Roebuck, Walker and Centre Streets, N. Y.

INDEX.

PAGE

Statement of the case 1

Argument 3

Point I.

Recitals in these negotiable bonds 3

It is admitted by all parties and all Courts that these sections of the Code were enacted in the manner prescribed in the Constitution; are constitutionally valid and authorize the issue of bonds on the conditions therein prescribed 4

Our propositions with regard to these Stanly County bonds are twofold:

(*A*) That under the decisions of the Supreme Court of North Carolina, as they existed when these bonds were issued, the issuance of these bonds, with the recital that they are "issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County," constitutes a conclusive adjudication by the appointed tribunal that all the conditions precedent prescribed by these Sections of the Code were fulfilled, *whatever these Code sections may mean*, and even if

PAGE

they mean all that the learned counsel for the county now contends that they mean. This was the law as it had been laid down in the decisions of the Supreme Court of North Carolina at the time of the issuance of these bonds. Under numerous decisions of the Federal Courts the purchasers of these bonds were entitled to rely upon these decisions of the Supreme Court of North Carolina, which had been rendered and which constituted the law of the State at the time these bonds were issued---------- 4

Effect of recitals in bonds, stated by the Supreme Court of North Caroline, in Belo vs. Commissioners of Forsyth County, 76 N. C., 489 (1877), before the bonds now in question were issued.. 5

(B) Our second proposition is that inasmuch as the question here involved is a question of commercial paper and of the validity of contracts entered into before any decisions were rendered by the Supreme Court of North Carolina which would in any way impeach the validity of these bonds, the Federal courts (if there were no decisions prior to the issuance of the bonds in favor of their validity, as we maintain that there are) will exercise their own judgment and follow their numerous decisions, which hold that when bonds are issued as these are, reciting that they are "issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County," such recital is conclusive in favor of a *bona-fide* holder of the bonds that all the con-

PAGE

ditions precedent to the issuance of the bonds have been fulfilled as required by these sections of the Code and constitutes an estoppel upon the county to show otherwise..... 9

Order of Commissioners recites that citizens of county have an interest in railroad, and this is conclusive of the fact, whatever these words of the Code may mean..... 13

It is admitted on the record, and it is undisputed, that the railroad was completed and put in operation as contemplated in the order and vote of the people of the county..... 14

Point II.

The precise proposition that we now state is this: that whatever be the facts and conditions upon which the Code authorized the issuance of county bonds, whether (1) the railroad in aid of which the bonds are to be issued and must have been an unfinished road at the time of the adoption of the Constitution, or at the time of the passage of the Act of April 10, 1869 (which afterwards became Sections 1996 *et seq.* of the Code), or whether (2) the citizens of the county must have had an interest in the road, or whether (3) the taxable property in the county must be such that a tax rate to pay the bonds would not exceed double the State tax rate—in short, whatever may have been the conditions required by the said Code to exist in order to authorize the issue of bonds thereunder—the said express recital in these bonds is conclusive

PAGE

in favor of the *bona fide* holder of these bonds, that all those conditions existed which were required by the said Sections of the Code to exist precedent to the issue of the bonds---------- 18

Objection of counsel for county answered-------- 22

Recital of the Act of March 3, 1887, in the bonds is immaterial---------- 25

Point III.

There was lawful authority for the issue of these bonds in the present case under the Code, Sections 1996 to 2000. These sections of the Code were originally passed as the Act of April 10, 1869. They were afterwards adopted as Sections 1996 to 2000 of the Code of North Carolina of 1883. It is admitted by all that these sections of the Code (1996 to 2000) were adopted in accordance with the Constitution as respects the three several readings and the entry of yeas and nays upon the journal, etc... 26

The provision of the Constitution of North Carolina requiring (see Art. VII., Sec. 7, in the Appendix to this Brief), "a vote of a majority of the qualified voters therein" [*i. e.*, in any county, city, town or other municipality contracting the debt], and the similar provision in the Code (see Secs. 1996-2000 in said Appendix) were complied with in the present case---- 28

Sections 1996 to 2000 of the Code do not violate Article 5, Sections 6 and 7, of the Constitution as to "Special purpose," "Special object" or "Special approval" of the General Assembly -- 30

PAGE

(a) In the present case, however, there is not a word or syllable in this record to show that the county tax necessary for these bonds would exceed double the State tax; therefore, the question does not arise..... 31

(b) If, however, it had been shown in the record in this case that the county tax for these bonds might exceed double the State tax, then these bonds are, nevertheless, valid..... 31

First, because the Code does not violate the provisions of Article V., Section 6 and 7, of the Constitution above quoted 31

But, Second, however this point may be decided, a ruling one way or the other would not invalidate these bonds. A bond may be a valid obligation, although there is not sufficient tax to pay it..... 33

Furthermore, Third, even if there be this tax-rate limit in Article V., Section 6 of the Constitution of North Carolina, that is a mere limit. It does not appear as a matter of law on the face of the Constitution, or on the face of these Sections of the Code, or on the face of these bonds, that in the instance of these particular bonds of Stanly County the tax-rate limit would be exceeded. Whether or not this tax-rate limit would, as a fact, be exceeded, as a matter of *pais*, of which the holder of a negotiable bond, like the bonds in question in the present case, is not bound to take notice (See Point I. of

PAGE

this Brief, *supra*). Moreover, as above stated, there is no proof in the present case that the county tax for these bonds would exceed double the State tax..... 34

These Sections of the Code are prospective in their operation, and they are not limited to any railroad which has been begun either before the constitution of 1868 was adopted or before the adoption of these Sections of the Code by the Act of April 10, 1869..... 35

Erroneous construction of the word "Completion," in Section 1996 of the Code by the Supreme Court of North Carolina in its late decision in the Stanly County Case, 121 N. C., 394 (1899)..... 36

Erroneous construction in the Stanly County Case by the State Supreme Court of the words "any Railroad in which the Citizens of the County May Have Interest," in said Section 1996 of the Code..... 37

Our view is supported by the following decision rendered by the North Carolina Supreme Court in 1869, the year following the Constitutional Convention..... 40

It is clear that the interest spoken of is the interest that the citizens of the county might have in any public improvement..... 43

No "policy" of the State against Railroad Aid Bonds. Provision as to "unfinished" railroads applies only in case of *State* aid bonds..... 44

As to *counties* there was no distinction made as to whether the road was finished or unfinished at the time of the adoption of the Constitution... 44

PAGE

Even the learned counsel for the county would admit that if there had been a special act authorizing the issue of these bonds, or if the act of March 3, 1887, had been properly enacted by the Legislature, there would have been clear constitutional power to issue these bonds. How, then, can the learned counsel seriously argue that the Constitution of the State of North Carolina has adopted any policy as against the issue of county railroad aid bonds 45

Further, as to Code Sections 1996–2000. These sections give power to issue the bonds. The objections of the county further answered 45

Mistake of counsel for the county in stating that the construction given Section 1996 of the Code by the United States Circuit Court of Appeals makes part of said section surplusage 48

So, also, whether or not the railroad had been begun before April 10, 1869, or even before the adoption of the Constitution (April 24, 1868), was a fact *in pais* to be determined by the County Commissioners before they issued the bonds, and not a matter with which the *bona fide* purchaser of these negotiable municipal bonds is concerned 50

Answer to objections of county 51

Re the "interest of the citizens of the county" ... 51

Re the "completion" required by the Code 52

Negotiability of municipal bonds and what negotiability means 55

No record required to be kept of such facts as are now set up by the county as a defense 56

Conclusion 62

PAGE

This Court, therefore, should hold said bonds valid, and the decree of the Circuit Court of Appeals should for the foregoing reasons be affirmed 63

Appendix to Brief.

ARGUMENT AND VIEWS OF LINDSAY PATTERSON, ESQ., OF NORTH CAROLINA 64

"Stanly County bond case. Decision of the Supreme Court. A review of a case that embodies principles of far-reaching and dangerous effects. If the decision stands it will destroy the fundamental principles of popular government. The Courts can construe statutes, but have no right to radically change them" 64

Provisions of Constitution, Ordinance of Constitutional Convention and Statutes of North Carolina, which this Court may desire to refer to in connection with this case 72

1.

The following are provisions of the Constitution of North Carolina (see Code of North Carolina, 1883, Volume 2) 72

2.

PAGE

Act of April 10, 1869, being Chapter CLXII. of the Laws of 1868, 1869 (p. 417), an act to authorize the several counties of the State to take stock in railroad companies---------- 74

3.

THE CODE SECTIONS.

Sections 1996–2000 of the Code of North Carolina of 1883 (also authorizing bonds in question)--- 76

It is admitted by all parties and all Courts that these sections of the Code are constitutionally valid, and authorize the issue of bonds on the conditions therein prescribed 77

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 264.

The Board of Commissioners of Stanly County and I. W. Snuggs, Treasurer of Stanly County,
Petitioners,

vs.

W. N. Coler & Company,
Respondents.

Brief for Respondents.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel.

STATEMENT OF THE CASE.

This suit was originally brought in the United States Circuit Court for the Western District of North Carolina. It was heard upon the bill, answers, repli-

cations and evidence, and resulted in a decree in favor of Coler & Company, complainants, and holders of negotiable bonds of Stanly County. The decree of the Circuit Court, rendered by Judge SIMONTON, is found on page 62 of the record.

The opinion of Judge SIMONTON is printed at large in the Record, page 42, *et seq.*

The defendants—to wit, the County Commissioners of Stanly County and Snuggs, its Treasurer—took an appeal to the United States Circuit Court of Appeals for the Fourth Circuit, where it was heard, and an opinion was rendered by GOFF, J. (Record, page 65), reversing the decision of the Circuit Court and directing that Court to dismiss the bill (Record, page 74).

Thereupon a petition for rehearing was filed in the United States Circuit Court of Appeals (Record, page 75); and, after argument, that Court rendered its opinion, granting the petition for rehearing and reversing its former opinion and decision and holding the bonds valid (Record, page 81), and a decree was entered accordingly affirming the decree of the Circuit Court (Record, page 102).

The opinions of MORRIS and BOYD, JJ., and the dissent of GOFF, J., appear in the Record, pages 81, 89, 102.

The Commissioners of Stanly County filed a petition for *certiorari*, and the same was granted by this Court, and the case now stands for argument here on this writ of *certiorari*.

We print in the APPENDIX to this brief the provisions of the Constitution of the State of North Carolina, so far as they are here material, and the original Act of April 10, 1869, which afterwards became Sections 1996–2000 of the Code of 1883.

ARGUMENT.

I.

Recitals in These Negotiable Bonds.

The bonds in suit are negotiable (see Record, p. 7 for copy of bond). They are dated July 1, 1890, and were issued in that year. They recite as follows (Record, p. 7):

"*This bond* is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, making a total of one hundred thousand dollars, *issued by authority* of an act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled, 'An Act to amend the Charter of the Yadkin Railroad Company,' *and of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*, and *authorized by a majority vote of the qualified voters* of Stanly County, at an election regularly held for that purpose on the 15th day of August, 1889, duly ordered by the Board of Commissioners of Stanly County."

It will be observed that they recite not only the act of March 3, 1887, *but specifically Sections 1996 to 1999, inclusive, of the Code*, and that the bonds are authorized by a *majority vote* of the qualified voters of Stanly County, voting at an election held the 15th of August, 1889. These bonds also recite (Rec., p. 7) that they were issued to pay for a subscription to the stock of the Yadkin Railroad Company, mentioned in the bonds, to aid in the construction of the railroad of that company.

The complainants are *bona fide* holders for value of 48 of the said Stanly County bonds (Rec., pp. 2, 3, 42, 43, 62).

Sections 1996-2000 of the Code of North Carolina of 1883 are printed in the Appendix to this Brief.

It is admitted by all parties and all Courts that these sections of the Code were enacted in the manner prescribed in the Constitution, are constitutionally valid and authorize the issue of bonds on the conditions therein prescribed.

Our propositions with regard to these Stanly County Bonds are twofold:

*(A) That under the decisions of the Supreme Court of North Carolina, as they existed when these bonds were issued, the issuance of these bonds, with the recital that they are "issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County," constitutes a conclusive adjudication by the appointed tribunal that all the conditions precedent prescribed by these sections of the Code were fulfilled,* WHATEVER THESE CODE SECTIONS MAY MEAN, *and even if they mean all that the learned Counsel for the county now contends that they mean. This was the law as it had been laid down in the decisions of the Supreme Court of North Carolina at the time of the issuance of these bonds. Under numerous decisions of the Federal Courts the purchasers of these bonds were entitled to rely upon these decisions of the Supreme Court of North Carolina, which had been rendered and which constituted the law of the State at the time these bonds were issued.*

We proceed to consider some of the decisions of the North Carolina Supreme Court, in which this doctrine is stated.

Effect of recitals in bonds, stated by the Supreme Court of North Carolina, in Belo vs. Commissioners of Forsyth County, 76 N. C., 489 (1877), before the bonds now in question were issued.

No Court in this country has stated in stronger language than the Supreme Court of North Carolina the doctrine of the negotiability of municipal bonds and of estoppel by recitals in such bonds. We have reprinted at length the case of *Belo vs. Commissioners of Forsyth County*, in a separate pamphlet, for the convenience of this Court. The Supreme Court of North Carolina in that case said:

"Municipal bonds are negotiable instruments, and the legal rights of the holders of such paper do not so much rest upon abstract propositions, though true, as upon a system of practical rules found by experience to be essential to healthy commercial life. For the public protection and the convenience of trade, every intendment is made in favor of the validity of negotiable instruments. Where bonds have been issued and sold in the market, and have come into the hands of a *bona fide* holder before maturity, as a general rule such bonds are *prima facie* valid, and the *onus* is upon the party impeaching them to show the contrary. This rule, however, which subsists between individuals, is much modified in respect to corporate bonds. Such bonds can be issued only in pursuance of a special grant of power, and the party claiming the benefit of such bonds must show a *power* in the corporate body to issue them. But if he is a purchaser for value without notice and before maturity, he need do no more. If a municipal corporation has the power to issue bonds only on a compliance with conditions precedent, as, for instance, as here, in pursuance of a popular vote and the bonds are issued, the presumption is that the conditions have been observed and they are *prima facie* valid, though the defendant may show the contrary unless he is *estopped* by his own acts from doing so. The principle, however, of equitable estoppel is a most important element in the transaction. For whether conditions precedent have been complied with is a

matter of fact to be determined by some tribunal invested with the power and authority to decide it, and the decision when made should be final. It is not disputed that the *power* to make the subscription of stock and issue the bonds was conferred upon the County of Forsyth by the Ordinance of the Convention. It is equally clear that the tribunal which was authorized to issue the bonds only on compliance with conditions precedent was the sole tribunal to determine the fact whether the conditions had been fulfilled. In our case the Justices of the County, a majority concurring, was the Court or tribunal designated to carry the law into effect, and was the tribunal to decide whether the conditions had been complied with, and their decision is final in a suit by a *bona fide* holder of the bonds against the municipality. This determination of a question of fact by the Justices is manifested in two ways: first, by the records of their Court, and, second, by the recitals in the bonds issued by them. The Justices were authorized by the Act to take the sense of the people, declare the result and issue the bonds. Their declaration spread upon the Minutes of the Court and made a record is conclusive against the County in favor of all *bona fide* bondholders, without notice. If they purchased, before maturity, they need look no further (*Marcy vs. Township of Oswego*, 92 U. S. Rep., 637; *Dunning vs. Houston*, 18 Am. Rep., 253, and note). If there was fraud in making the record, or irregularities in the election which would vitiate the bonds upon exceptions taken in apt time, any taxpayer of the County could intervene and enjoin their issue. But this could only have been done before the bonds were issued, negotiated and passed into circulation as commercial securities, with the insignia of validity impressed upon their face (*Chester & Lenoir R. R. Co. vs. Caldwell Co.*, 72 N. C., 486). If intentionally or by neglect the taxpayers fail to protest, interfere or assert their legal rights; if they suffer the election to be held, a false result declared, the bonds to be issued and sold, and the proceeds received by their agents; if for the period of four years they annually submit to a special tax, which is applied in payment of the accruing interest on the bonds; if they still retain the Railroad stock without an offer to surrender it, and continue to have it represented in the meetings of the Company, they cannot now disaffirm the acts of their public agents who issued and negoti-

ated the sale of the bonds. They had the opportunity to intervene and protect themselves before the rights of third persons accrued. Their acquiescence is a ratification by the principal of the acts of his agent, and, according to all the leading authorities upon this question, the doctrine of equitable estoppel is a complete bar, and is strictly applied to the enforcement of these municipal obligations (2 Daniel on Neg. Instr., Sec. 479; *State vs. Vanhorne*, 7 Ohio St., 331; *Barrett vs. County Court*, 44 Mo., 201).

"While the decisions are very uniform that the record of the Justices Court affirming the fact of compliance with the conditions precedent to the subscription of stock is conclusive and estops the County from denying the validity of the bonds in the hands of a *bona fide* holder before maturity, they are equally uniform in giving the same effect to the *recitals* in the bonds themselves that they had been issued in pursuance of the law which authorized their issue. The recital is a determination of the question, and the holder has the right to rely on it (*Town of Coloma vs. Eaves*, 92 U. S. Rep., 484; *Lynch vs. Winnebago*, 16 Wall., 13; *Knox County vs. Aspinwall*, 21 How., 539). In delivering the opinion of the Court in *Coloma vs. Eaves*, Mr. Justice STRONG says: 'In the leading case of *Knox County vs. Aspinwall*, the decision was rested upon two grounds. One of them was that the mere issue of the bonds containing a recital that they were issued in pursuance of the Legislative Act was a sufficient basis for the assumption by the purchaser that the conditions on which the County was authorized to issue them had been complied with, and it was said the purchaser was not bound to look further for evidence of such compliance, though the recital did not affirm it. This position was supported by reference to the *Royal British Bank vs. Turquand*, 6 Ellis and Blackburn, 327, a case in the Exchequer Chamber, which fully sustains it and the decision in which was concurred in by all the Judges. This position has been more than once reaffirmed in this Court. It was in *Moran vs. Miami County*, 2 Black, 732; in *Mercer County vs. Hacket*, 1 Wall., 83; in *Supervisors vs. Schenck*, 5 Wall., 784, and in *Meyer vs. Muscatine*, 1 Wall., 384. It has never been overruled, and whatever doubts may have been suggested respecting its correctness to the full extent to which it has been sometimes announced, there should be no doubt of the entire correctness of the other rule asserted in *Knox vs. Aspinwall*. That

has been so firmly seated in reason and authority that it cannot be shaken.' To the same effect is the recent case of *Humbolt Township vs. Long*, 92 U. S. Rep., 642. See, also, a valuable summary of the doctrine as established by the decisions of the Supreme Court of the United States by Judge DILLON, 'Law of Municipal Bonds,' Sec. 11, the result of which is that the recitals in the bonds to that effect are conclusive of compliance with the conditions precedent, and constitute an estoppel *in pais* upon the municipalities."

It stands demonstrated, therefore, from said case of *Belo vs. Commissioners of Forsyth County*, 76 N. C., 489, *supra*, decided in 1877, which continued to be the law down to the time when these Stanly County bonds were issued, that when these bonds were issued reciting that they are "*issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County*" that this recital in the bonds was, in the language of the Supreme Court of North Carolina in the *Belo case* above quoted "conclusive against the county in favor of all *bona fide* bondholders without notice."

We need not cite or quote at length the decisions of this, the Supreme Court of the United States, to show that the Federal courts will follow the decisions of the State court which had been rendered at the time the bonds were issued. It is enough to quote from the language of Mr. Justice HARLAN, in the case of *Wilkes County vs. Coler*, 180 U. S., 506, where the learned Justice says in answer number 2, page 533:

"2. That the rights of the parties in this case are determinable by the law of the State as it was declared by the State court to be at the time the bonds here involved were made in the name of the county and put upon the market."

So this Court, in *Folsom vs. Ninety-Six*, 159 U. S., 616, quoting from *Burgess vs. Seligman*, 107 U. S., 20, said (p. 625):

"So when contracts and transactions have been entered into, and rights have accrued thereon *under a particular state of the decisions*, or when there has been no decision of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued."

See also the cases cited by SIMONTON, J. (Record, p. 45), and the well-known case of *Township of Pine Grove vs. Talcott*, 19 Wall., 667, and a score of other cases in this Court.

*(B) Our second proposition is that inasmuch as the question here involved is a question of commercial paper and of the validity of contracts entered into before any decisions were rendered by the Supreme Court of North Carolina which would in any way impeach the validity of these bonds, the Federal courts (if there were no decisions prior to the issuance of the bonds in favor of their validity, as we maintain that there are) will exercise their own judgment and follow their own numerous decisions, which hold that when bonds are issued as these are, reciting that they are "issued by authority * * * of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina and authorized by a majority vote of the qualified voters of Stanly County," such recital is conclusive in favor of a bona fide holder of the bonds that all the conditions precedent to the issuance of the bonds have been fulfilled as required by these sections of the*

Code and constitutes an estoppel upon the county to show otherwise.

The cases are so numerous in this court to the effect that the decisions in a State court rendered *after* the issuance of bonds by some municipality in such State are not binding on the Federal courts that it is not necessary to refer to them at length.

We, may, however, mention a decision of this Court made after certain decisions had been made by so eminently respectable a court as the Court of Appeals of the State of New York, in which this Court distinctly declines to follow the rulings of that Court, these decisions being made with reference to railroad aid bonds.

In *Town of Venice vs. Murdock*, 92 U. S., 494, certain railroad aid bonds issued in 1853 by the Town of Venice, New York, were sued upon in the United States Circuit Court for the Northern District of New York. Bonds like these had been held invalid in the Court of Appeals of the State of New York in *Starin vs. Town of Genoa* and in *Gould vs. Town of Sterling*, 23 N. Y., 439, 456, and by numerous subsequent cases in the Court of Appeals in the State of New York. Notwithstanding this fact, however, these bonds were held good by the Supreme Court of the United States. This Court in giving its opinion, says (page 499):

"We are aware that in the State of New York it has been held adversely to the opinions we have expressed. It was so held in *Starin v. The Town of Genoa*, and in *Gould v. The Town of Sterling*, 23 N. Y., 439, 456. In the former case the court rules, that under the act of April 16, 1852 (the same act which conferred powers conditionally upon the supervisors and commissioners of the town of Venice), the onus was on the bondholder

to show, in a suit against the town, that two-thirds of the resident taxables had given their written assent to the creation of the bonds. In the latter case a similar decision was given when the bonds had been issued under another act, much like the act of 1852, though differing in some material particulars. These decisions are in conflict with the rulings of the court in *Bissell v. Jeffersonville*, 24 How, 287 ; *Knox County v. Aspinwall*, 21 *id.*, 539 ; *Mercer County v. Hackett*, 1 Wall., 83, and other cases which we have cited. They are in conflict also with the decisions in other State courts * * * (p. 501). But assuming that what was ruled in *Gould v. Sterling* and in *Starin v. Genoa* is still the doctrine of the New York courts, we find ourselves unable to yield to it our assent. It is against the whole current of our decisions, as well as against the decisions made in other States; and we think it is not supported by the soundest reasons."

See, also, to the same effect, *Burgess vs. Seligman*, 107 U. S., 20, where this Court says (page 33) :

"When contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, *or when there has been no decision of the State tribunals*, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued."

See, also, to the same effect, *Township of Pine Grove vs. Talcott*, 19 Wall., 666, 677, where this Court said (page 677) :

"It is insisted that the invalidity of the statute has been determined by two judgments of the Supreme Court of Michigan, and that we are bound to follow those adjudications. We have examined those cases with care. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. We think the dissenting opinion in the one first decided is unanswered. Similar laws have been passed in twenty-one States. In all of them but two it is believed their validity has been sustained by the

highest local courts. It is not easy to resist the force of such a current of reason and authority. The question before us belongs to the domain of general jurisprudence. In this class of cases this court is not bound by the judgment of the courts of the States where the cases arise. It must hear and determine for itself. Here, commercial securities are involved. When the bonds were issued there had been no authoritative imtimation from any quarter that such statutes were invalid. The Legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal. The general understanding of the legal profession throughout the country is believed to have been that they were valid. The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us, that end can be accomplished unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged, and disappoint the wise and salutary policy of the framers of the constitution in providing for the creation of an independent federal judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery."

The recital above quoted, in the bonds in question, that they are "*issued by authority of* * * * *Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*," *&c.*, is conclusive in favor of *bona fide* holders of these bonds, that *all the conditions existed* which were prescribed by these sections of the Code as precedent to the issuance of bonds.

That the words "*issued by authority of* Sections 1996, 1997," etc., in favor ot *bona fide* purchasers for

value, import full compliance with these sections of the Code, see opinion of Mr. Justice HARLAN in *Evansville vs. Dennett*, 161 U. S., 434, 442, where he quotes from *School District vs. Stone*, 106 U. S., 183, 187, the well-settled doctrine on that proposition. Same quotation, page 21 of this brief. See also *Waite vs. Santa Cruz*, 184 U. S., 302, to same effect.

That it is immaterial that the bonds also recited the Act of 1887 (even if said act is invalid), see cases exactly in point, *Wilkes County vs. Coler*, 180 U. S., 506, *Evansville vs. Dennett*, 161 U. S., 434, page 18, *et. seq.*, of this brief, and *Anderson County vs. Beal*, 113 U. S., 227, cited page 29 of this brief.

The order of the Board of County Commissioners of Stanly County, under which the subscription was made and the election held and the bonds issued, is set out in full in the record (pp. 19, 20).

Order of Commissioners recites that Citizens of County have an Interest in railroad, and this is conclusive of the fact, whatever these words of the Code may mean.

This order is important, in view of one of the grounds on which the application for this *certiorari* was made—namely, the ground that the County of Stanly, or the citizens of the county, had no *interest* in the railroad in question. The order of the Board of Commissioners expressly finds and recites, *inter alia*, precisely the contrary, as follows (Record, p. 19): "*It appearing that the citizens of said county have an interest in said railroad, it is hereby resolved and ordered*," *etc.*

Therefore, WHATEVER THESE WORDS IN THE CODE MAY MEAN, this recital in the order of the Board of County Commissioners *is conclusive of the existence of the fact that the railroad is one in which the citizens of the county have an interest.* In the language of the Supreme Court of North Carolina in the case of *Belo vs. Commissioners of Forsyth County*, 76 N. C., 489 (1877), a decision rendered before these bonds were issued:

"It is equally clear that the tribunal which was authorized to issue the bonds only on compliance with conditions precedent was the sole tribunal to determine the fact whether the conditions had been fulfilled. This determination of a question of fact by the Justices is manifested in two ways: first, by the records of their court, and second, by the recitals in the bonds issued by them. The Justices were authorized by the act to take the sense of the people, declare the result and issue the bonds. Their declaration spread upon the minutes of the court and made a record is conclusive against the county in favor of all *bona fide* holders without notice."

The Board thereupon ordered an election to be held, as recited in the bond, in accordance with Section 1998 of the Code. The order was carefully considered, and conserved the interests of the county, because it provided that if a majority of the voters voted to subscribe for the stock of the said railroad the bonds of Stanly County should be delivered as follows:

"$25,000 when ten miles is constructed and in operation, from the Rowan County line *into the County of Stanly;* $25,000 when the road is constructed from Salisbury, in said county, into Albemarle; and the remaining $50,000 when the road is constructed from Salisbury into Norwood, in Stanly County," etc. (Rec., pp. 19, 20).

It is admitted on the record, and it is undisputed, that **the railroad was completed and put in**

operation as contemplated in the order and vote of the people of the county. (Record, pp. 5, 14, 20). The subscription was accordingly made and the bonds of Stanly County issued, sold in the market and held by *bona fide* holders.

The county levied taxes and paid the interest on these bonds for more than four years.

At the time when these bonds were issued and sold there was no decision of the Supreme Court of North Carolina, or of any of the Courts of the State, construing Sections 1996–1999 of the Code as not furnishing authority for the issuance of these or similar bonds. On the contrary, there were many decisions of the Courts of North Carolina in line with the decisions in other States and with the decisions of the Supreme Court of the United States in regard to the issuance of county and municipal bonds.

In 1897, years *after* these bonds had been issued and sold, the Supreme Court of North Carolina, in what is called the "Stanly suit"—to wit, the case of *Commissioners of Stanly County vs. Snuggs*, 121 N C., 394 (A. D. 1899), which was a simulated and collusive case, being brought by the Commissioners of Stanly County against the Treasurer of the County of Stanly, and making no bondholder a party, and in which no bondholder was represented or heard, made a decision on which the petitioners in this case rely, the said petitioners being the said Board of County Commissioners of Stanly County, and the said Snuggs being the Treasurer thereof, they being, as above stated, the very parties and the only parties to the suit in the Supreme Court of the State of North Carolina.

In other words, these two petitioners, who are now here on the same side of this case, both claiming that these bonds are invalid—that is, the Board of Commissioners of the County of Stanly and the Treasurer of the County of Stanly—were the very parties, and the only parties, to the Stanly case in the Supreme Court of North Carolina. They were really not adversary parties in that suit in the Supreme Court of North Carolina, but were really both on the same side of the case. The suit was thus really only between different officers of the same body corporate, and there was really but one party before the Court—namely, the County of Stanly; and that was the decision which the petitioners in this case now contend conclusively determined the rights of the holders of these bonds, issued years before that case was decided. The bare statement of the proposition shows its audacious and preposterus character. When that decision is considered, as it is in the opinions of Judges MORRIS and BOYD, Judges of the United States Circuit Court of Appeals (Rec., pp. 81, 89), it is inconceivable that the learned Judges of the Supreme Court of North Carolina would, or ever could, have made such a decision, if the parties in interest had been present or represented—to wit, the bondholders.

The question presented in this case is very short—is the decision of the Circuit Court of Appeals right? If it is it ought to end the controversy, and without reference to the decision in the collusive and simulated case of *Stanly County vs. Snuggs*, to which we have referred, and which is the sole basis for the present defense.

There was lawful statute authority, properly enacted by the Legislature, authorizing the issue of bonds by counties, namely Sections 1996 to 1999 of the Code.

The "power" to issue County railroad aid bonds is expressly given by these sections.

The bonds were issued by the County of Stanly, reciting that they were issued "by authority of * * * Section 1996, 1997, 1998 and 1999 of the Code of North Carolina," and authorized by a majority vote of the qualified voters of Stanly County," etc. This recital is conclusive in favor of the *bona fide* holder of these negotiable bonds that *all the facts* existed which, by the said Sections 1996 to 1999 of the Code, were prerequisite to the issue of the bonds, and the County of Stanly is estopped to deny such facts.

But, furthermore, the order above referred to, entered by the Board of Commissioners of the county, and all the proceedings for the issuance of these bonds show that, as a matter of fact, the conditions existed which, under said Sections 1996 to 1999 of the Code, were necessary in order that bonds might be issued under the authority of the said sections (Rec., pp. 19, 20). The said order of the Board of County Commissioners recites, what was true in fact, that the citizens of the county had an interest in the said railroad, and there is not a particle of evidence, proof, or finding of any kind in the record to show the contrary; but, even if there were, the county is, by the recitals in the bonds, estopped to show the contrary.

II.

The precise proposition that we now state is this: that whatever be the facts and conditions upon which the Code authorized the issuance of county bonds, whether (1) the railroad in aid of which the bonds are to be issued must have been an unfinished road at the time of the adoption of the Constitution, or at the time of the passage of the Act of April 10, 1869 (which afterwards became Sections 1996 et seq. of the Code), or whether (2) the citizens of the county must have had an interest in the road, or whether (3) the taxable property in the county must be such that a tax rate to pay the bonds would not exceed double the State tax rate—in short, whatever may have been the conditions required by the said Code to exist in order to authorize the issue of bonds thereunder—the said express recital in these bonds is conclusive in favor of the bona fide holder of these bonds, that all those conditions existed which were required by the said sections of the Code to exist precedent to the issue of the bonds.

This precise proposition has been repeatedly determined by the Supreme Court of the United States. We need refer only to a single typical case; namely, *Evansville vs. Dennett* (161 U. S., 434). In that case there were two sets of bonds involved. The bonds issued to the Evansville, Carmi and Paducah Railroad Company recited that they were issued:

"by virtue of an act of the general assembly of the State of Indiana, entitled 'An act granting to the citizens of the town of Evansville, in the county of Vanderburg, a city charter,' approved January 27, 1847; and by virtue of an act of the general assembly of the State of Indiana, amendatory of said act, approved March 11, 1867, conferring upon the city council of said city power to take stock in any company," etc.

With reference to the act of March 11, 1867, the Supreme Court of the United States said (p. 439):

"It is certified to us that, under the decision of the Supreme Court of the State of Indiana, this latter act [March 11, 1867] was invalid, because amendatory of a prior invalid act.

"The bonds in question, of both series, were in fact issued in attempted compliance with the act of March 11, 1867, referred to in the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company.

"The ordinances of the city council of the city of Evansville authorizing the issue of both series of bonds disclose that they were issued pursuant to an election by the legal voters of the city of Evansville, but do not recite that any petition of resident freeholders of the city was presented to the common council, as required by the charter; and *no such petition was, in fact, in either case made or presented to the common council of the city of Evansville.*"

That case, therefore, was precisely like the present case in this, to wit, the bonds recited two acts, one the act of March 11, 1867, which was invalid, the other the charter of the city of Evansville, which was valid. The charter of the city of Evansville gave authority to issue bonds on certain conditions. The provisions of the charter of the city of Evansville, however, were not complied with. The bonds, however, recited that they were issued "by virtue of" the city charter; *i. e.*, the act approved January 27, 1847.

On this state of facts the United States Circuit Court of Appeals for the Seventh Circuit, certified to the Supreme Court of the United States, among others, the following questions (161 U. S., 440), the answers of this Court to said questions being enclosed in brackets:

"3. Do the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company, as against a *bona fide* purchaser for value of such bonds, estop the City of Evansville from asserting that such bonds were not issued, for stock subscribed, upon a petition of two-thirds of the resident freeholders of the city, distinctly setting forth the Company in which stock was to be taken, and the number and amount of shares to be subscribed? [Yes].

"4. Under the recitals in the bonds issued to the Evansville, Carmi and Paducah Railroad Company was a *bona fide* purchaser for value put upon inquiry to ascertain whether a proper petition of two-thirds of the residents of Evansville, freeholders of that city had been presented to the Common Council before that body had subscribed for stock in the said railroad company? [No].

"5. Was a *bona fide* purchaser for value of the bonds issued to the Evansville, Carmi and Paducah Railroad Company charged by the recitals in said bonds with notice that they were issued in pursuance of an invalid act, and in pursuance of an election under it [No], or **had such a purchaser a right to assume, from the recital, that the prerequisites of both the valid act and the invalid act had been observed by the Common Council before the issuance of such bonds? [Yes].**

Note the precise question presented to the Supreme Court of the United States in the case of *Evansville vs. Dennett* under said certified question No. 5, above quoted, was whether the purchaser had a right to assume from the recital that the prerequisites of both the valid act, namely, the charter of the city, and the invalid act, namely, the Act of March 11, 1867, had

been observed by the common council before the issuance of the bonds, this question being the latter half of question No. 5. The Supreme Court of the United States answered "Yes." We will not quote here the entire language of the case. It is enough here to repeat the quotation made by Mr. Justice HARLAN in giving the opinion. He says (p. 442), quoting from *School District vs. Stone*, 106 U. S., 183, 187:

"'Numerous cases have been determined in this court, in which we have said that, where a statute confers power upon a municipal corporation, upon the performance of certain prece'ent conditions, to execute bonds in aid of the construction of a railroad, or for other like purposes, and imposes upon certain officers, invested with authority to determine whether such conditions have been performed, the responsibility of issuing them when such conditions have been complied with, recitals by such officers that the bonds have been issued 'in pursuance of' or 'in conformity with,' or 'by virtue of' or 'by authority of' the statute, have been held in favor of *bona fide* purchasers for value to import full compliance with the statute, and to preclude inquiry as to whether the precedent conditions had been performed before the bonds were issued (*Town of Coloma vs. Eaves*, 92 U. S., 484; *Commissioner vs. Bolles*, 94 U. S., 104; *Mercer County vs. Hacket*, 1 Wall., 83; *Anderson County Commissioners vs. Beal*, 113 U. S., 227, 238-9, and authorities there cited; *Cairo vs. Zane*, 149 U. S., 122)."

We say, therefore, that, *whatever be the conditions or circumstances* required to exist by the Code precedent to the issuance of these bonds—whether the road must have been an unfinished road at a certain time, whether the citizens of the county must have had an interest in the road, or whether the taxable property in the county must be such that a tax rate to pay the bonds would not exceed double the State tax—in short, whatever conditions are required by these Code sections—the recitals in the bonds gave the

purchasers thereof "the right to assume that the circumstances existed which authorized the county to exercise the authority given by the Legislature" (see *School District vs. Stone*, 106 U. S., 183, 187, quoted *supra*).

This proposition is conclusive in favor of the holders of these bonds. The act—namely, the said sections of the Code—was valid, and admitted to be valid by all Courts and all parties. Said sections gave authority under certain circumstances to issue bonds, and the recital is conclusive in favor of *bona fide* purchasers that those circumstances existed.

Objection of Counsel for County Answered.

The learned counsel for the County of Stanly, in his supplementary brief filed in the Supreme Court of the United States when the *Wilkes County case* (reported in 180 U. S., 506) was heard, attempted to make the point that these bonds show on their face that the road was not begun before the adoption of the Constitution of North Carolina—in 1868. His argument was as follows: That the bonds in the present case recite the act of March 3, 1887—namely: "An act to amend the charter of the Yadkin Railroad Company." He then makes the further proposition that the purchaser is charged with notice of the original charter of the Yadkin Railroad Company (not recited in the bond), and that, if this original charter is examined, it will be found to be Chapter 236 of the Acts of 1870, which was enacted after the Constitution was adopted.

This argument, however, is clearly insufficient. A purchaser of the bonds, reading the bond, would, it is true, see that the Act of March 3, 1887, is recited. It

would then be his duty, under the decisions of the Supreme Court of North Carolina, to examine the journals of the Legislature of the State of North Carolina to see whether those journals showed that the said act was properly enacted, and, on examining such journals, he would find that it was not properly enacted. This purchaser might then drop the matter of this act to amend the charter of the Yadkin Railroad Company, and go no further on that act. He could then proceed to examine Sections 1996 *et seq.* of the Code, and it would then be his duty to examine the journals of the Legislature to see whether said sections of the Code were properly enacted. Having found that said sections were properly enacted, then he finds the recital in the bonds to be that the bonds are issued *by authority of the said sections.* Now, our proposition is that, under the repeated decisions of the Supreme Court of the United States, the purchaser of the said bonds need go no further. He need not go back and examine all the pre-existing legislation, the charter of the railroad company, the question whether the railroad had been begun before the Constitution was adopted, or before April 10, 1869, when the statute which is now the Code sections was originally enacted. If he had made such inquiry he might have found that the railroad was begun before the adoption of the Constitution, even although the charter of this particular railroad company had not been granted until afterwards. The decisions of the Supreme Court of North Carolina, even at their utmost do not decide that the railroad *company* which owns the railroad in respect of which the bonds are issued must have been *chartered* before the adoption of the Constitution. The only requirement, at the utmost, is that the *railroad* should have been begun before the

adoption of the Constitution. Nothing appears on the face of these bonds, and nothing appears from the legislation therein recited, to show that the railroad in question may not have been begun long before the adoption of the Constitution.

But all this, under the decision of the Supreme Court of the United States in *Evansville vs. Dennett, supra*, is a matter which the *bona fide* purchaser of these bonds, under the recitals therein contained, need not concern himself. As soon as he has found these Sections 1996 *et seq.* of the Code, and has found that they give authority to issue bonds under such circumstances therein mentioned, and has found from the journals that these sections of the Code were properly enacted by the legislative body, he has then a valid act, properly enacted, authorizing the issue of these bonds, and as the bonds recite that they are issued by authority of that act, this recital is conclusive in his favor.

It makes no difference in this respect that the bonds also recite the invalid act of March 3, 1887. Such was the precise fact in *Evansville vs. Dennett* with respect to the invalid act of March 11, 1867, recited in the bonds in question in the said Evansville case. The decision of the Supreme Court was to this effect, that, although this invalid act was recited, the purchaser of the bonds

" had a right to assume from the recital that the prerequisites of both *the valid act* and the invalid act had been observed by the common council before the issuance of the bonds " (p. 440).

Recital of the Act of March 3, 1887, in the Bonds is Immaterial.

It is immaterial that the bonds in question in the present case (Record, page 7) recite that they were issued by authority of the Act of March 3, 1887, as well as of Sections 1996–1999 of the Code, for it is well settled law that if there was in fact legislative or legal authority for the issue of bonds it is immaterial that the bonds recite another act which did not give such authority.

This express proposition was considered and once more reaffirmed and decided by this Court in the case of *Wilkes County vs. Coler*, 180 U. S., 506, 524.

The principle on which this proposition rests is this namely, it was not necessary that the bonds in question should recite any act under which they were issued. Any recital of the Act of March 3, 1887, therefore, being useless, could be rejected as surplusage without vitiating the necessary and substantial parts of the bonds. This is under the familiar rule of law expressed in the legal maxim *Utile per inutile non vitiatur.*

See also to the same effect *Anderson County Commissioners vs. Beal*, 113 U. S., 227, a case directly in point; also *Evansville vs. Dennett*, 167 U. S., 434, also exactly in point, quoted *supra*, p. 18; also *Knox County vs. Ninth National Bank*, 147 U. S., 91; and *Cairo vs. Zane*, 149 U. S., 122.

The foregoing proposition we regard as conclusive of this case in favor of the holders of the bonds. It is a proposition which is decisive of the case.

The foregoing proposition was not considered by the Supreme Court of North Carolina in the case of *Commissioners of Stanly County vs. Snugge*, 121 N. C., 394, 1899; but even if it had been considered in that case and that Court had arrived at a different conclusion, such conclusion would not have been binding in the Federal Courts, for that decision was rendered long after these bonds were issued.

Nevertheless, we have thought it proper in this Court to go into the case at length, and, therefore, we have below stated somewhat at large the various arguments to show that even if the county is not estopped by the recitals in the bonds, the bonds are nevertheless valid and enforceable.

III.

There was lawful authority for the issue of these bonds in the present case UNDER THE CODE, **sections 1996 to 2000. These sections of the Code were originally passed as the act of April 10, 1869. They were afterwards adopted as sections 1996 to 2000 of the Code of North Carolina of 1883. It is admitted by all that these sections of the Code, 1996 to 2000, were adopted in accordance with the constitution as respects the three several readings and the entry of yeas and nays upon the journal, etc.***

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* The said Act of April 10, 1869, and the sections of the Code, and the relevant provisions of the Constitution of the State are reprinted in the APPENDIX to this brief.

The Supreme Court of the United States, in *Wilkes County vs. Coler*, 180 U. S., 506, was careful in answering the first question to say that the Federal Court should follow the decisions of the State Supreme Court as controlling upon the inquiry whether legislative enactments of 1868, 1879 and 1881 were passed in such manner as to become, under the Constitution, laws of the state, and thus the Supreme Court limited the effect of these decisions of the State Supreme Court to the point whether they had become laws of the State under Article II., Section 14, of the Constitution. The Supreme Court of the United States, by thus carefully limiting its answer to the first question, has, in effect, stated that these decisions of the Supreme Court of the State of North Carolina, as to the *construction* of the sections of the Code, are not to be controlling in the Federal Courts, and hence the general rule applies that the Federal Courts should either follow the decisions which were in existence when the bonds were issued, if there were any, or, if not, then they should consider the questions for themselves, and they are not bound by any subsequent decision of the State Supreme Court.

See paragraph (B) under Point I. of this Brief, *supra*, page 9.

Hence, decisions of the Supreme Court of North Carolina *construing* the Code, made *after* the bonds in question were issued, do not bind the Federal Courts, if such subsequent decisions of the Supreme Court of North Carolina are not intrinsically sound or not in accordance with the general principles of jurisprudence, but the Federal Courts may, and should, exercise their own independent judgment. There is a long line of decisions to that effect in the Supreme Court of

the United States, and these decisions relating to the construction of statutes are expressly recognized and distinguished by the Supreme Court of the United States in its opinion.

Notice that in *Wilkes County vs. Coler*, 180 U. S., 506, the Supreme Court says, referring to the acts of 1868, 1879 and 1881, as follows (519):

"Observe that the issue is not as to the construction, meaning or scope of a statute, but whether that which purports to be a legislative enactment ever became a law for any purpose."

Under this decision of the Supreme Court of the United States, the Federal courts, of course, are not bound by the decision of the Supreme Court of North Carolina construing the Code *after* the bonds were issued.

The provision of the Constitution of North Carolina requiring (see Art. VII., Sec. 7, in the Appendix to this Brief), "a vote of a majority of the qualified voters therein" [i. e., in any county, city, town or other municipality contracting the debt], and the similar provision in the Code (see Sec. 1996-2000 in said Appendix) were complied with in the present case.

EACH BOND RECITES (Record, page 7) that it is "*authorized by a majority vote of the qualified voters of Stanly County*," etc.

THE COMPLAINT in the suit in the State Court (Record, page 17) also alleges, in Paragraph 3, an order submitting the question of the issuance of these bonds "*to a vote of the qualified voters of the said county*," and in paragraph 4, "That by virtue of the above order

an election was held on the 15th day of August, 1889, in the said county, and the question was submitted in the form of 'Subscription' or 'No subscription.' That said election resulted in *a majority of the said qualified voters voting in favor of 'subscription.'*"

THE ANSWER of the County Commissioners in the State Court suit (Record, page 22) admits the truth of these allegations of the complaint.

The said bonds recite that they are issued by authority of the Act of March 3, 1887, and also by authority of Sections 1996–1999 of the Code, and a majority vote of the qualified voters of the county at an election duly ordered and regularly held. But the recital of the act (if that Act of March 3, 1887, be held not to give authority) would not invalidate the bonds, if they were, in fact, authorized by some other act, as Sections 1996 to 2000 of the Code, now under consideration, nor would it render ineffective the recital of the election.

See *Anderson County vs. Beal*, 113 U. S., 227, where the wrong act was recited. In that case this Court, notwithstanding the bonds recite the wrong act, held, as respects the recital of the election, as follows, to wit (p. 239):

"In view of all this, the statement by the commissioners in the bond that it is issued 'in pursuance of the vote of the electors of Anderson county of September 13, 1869,' is equivalent to a statement that 'the vote' was a vote lawful and regular in form, and such as the law then in force required in respect to prior notice."

See, also, the cases exactly in point, *Evansville vs. Dennett* in this Brief *ante*, POINT II, and *Wilkes County vs. Coler*, 180 U. S., 506, 524–525.

This recital, therefore, of "a majority vote of the qualified voters of Stanly county" at an election

"duly ordered" and "regularly held" (Rec., p. 7) in this Stanly County bond is a recital of such a vote as is required by the Constitution and by Sections 1996 to 2000 of the Code, and is conclusive in favor of the *bona fide* holders of these bonds, as was held in the said cases of *Anderson County vs. Beal* and *Evansville vs. Dennett, supra.*

Sections 1996 to 2000 of the Code do not Violate Article 5, Sections 6 and 7, of the Constitution as to "Special purpose," "Special object," or "Special approval" of the General Assembly.

Said Sections 6 and 7, Article 5, of the Constitution are as follows :

SECTION 6. "The taxes levied by the Commissioners of the several counties for county purposes, shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly."

SECTION 7. "Every act of the General Assembly levying a tax, shall state the special object to which it is to be applied, and it shall be applied to no other purpose."

It was objected by the State Court in the case of *Commissioner vs. Call* (123 N. C., 308), and in *Commissioners of Stanly County vs. Snuggs* (121 N. C., 394, 400, 401), cited in the *Call Case*, page 323, that these provisions of the Code are a *general* act, and as such violate Article V., Sections 6 and 7, of the constitution (quoted, *supra*), which provides, in substance, that taxes levied by the commissioners of the several counties for county purposes shall be levied in like

manner as the State tax, and shall never exceed the double of the State taxes, except for a special purpose, and with the special approval of the General Assembly, stating the special object to which the tax shall be applied.

(a) **In the present case, however, there is not a word or syllable in this record to show that the county tax necessary for these bonds would exceed double the State tax; therefore, the question does not arise.**

(b) **If, however, it had been shown in the record in this case that the county tax for these bonds might exceed double the State tax, then these bonds are, nevertheless, valid:**

FIRST, *because the Code does not violate the provisions of Article V., Section 6 and 7, of the Constitution above quoted.* The constitution only requires that the Legislature give special approval to the special purpose for which any tax is levied in excess of the rate named, but such special approval may be given as to all the counties, as well as to any one county, the object of the provision of the constitution being to require the special assent of the Legislature to the special purpose. If the rate referred to in Article V., Section 6, is to exceed the double of the State tax, this section requires the Legis-

lature to specify the special purpose for which it may so exceed the State tax. The Legislature could not authorize such excess by an act, general or special, which only named county purposes generally, and did not specify the special or particular purpose, *but it is not necessary that the Legislature should in each instance specify by name any particular county or counties.*

The specification required is only a specification of the *special purpose.* Legislative authority to subscribe for the stock in a railroad company and issue bonds in payment of such subscription is a "special purpose" within the meaning of this section, *and so the sections of the Code, 1996 to 2000, being the act of April 10, 1869, do specify the special purpose* for which the tax is to be levied. It is not necessary to name by name each particular county. If these sections of the Code had provided that the county commissioners of the county, A, B, C, D, etc., naming all the counties in the State, should have power to subscribe for stock in any railroad company, etc., obviously this would be good, for the very Section 6, Article V., of the Constitution referred to, contemplates that such taxes may be levied by all "the several counties" of the State. The Constitution does not say that any "special act" is required, but only requires that *the purpose* be specified, and that the tax and the purpose have the special approval of the General Assembly.

The proposition of the Supreme Court of North Carolina on this point seems to be, in effect, that if the Legislature passes a special act for each county in the State; that is to say, ninety-five acts, each act exactly alike, except that one act applies to one county and another to another, and so on through all the ninety-five acts, the legislation is good; but if the

Legislature, instead of doing this, enacts precisely the same act and says that this act shall apply to all counties in the State, then such an act is bad. Such a view is, of course, intrinsically unsound, and, if that be the view of the State Supreme Court, the Federal Courts cannot be expected to follow it as to negotiable bonds issued *before* such State decision was made.

BUT, SECOND, *however this point may be decided, a ruling one way or the other would not invalidate these bonds. A bond may be a valid obligation, although there is not sufficient tax to pay it.*

Such bonds could be paid by as much tax as could be levied, and, if at any time the Legislature did pass a special act giving its special approval to the levy of a further tax, then the defect of a lack of power to tax would be removed, if such defect existed. Therefore, on this point the objection raised by the Supreme Court of North Carolina must fall. That there may be bonds which are valid, although there is a tax-rate limit, is well settled (see *United States vs. Macon County*, 99 U. S., 582). Article V., Section 6, of the Constitution of North Carolina is a mere limitation upon the tax rate, such as was involved in this case of *United States vs. Macon County*, just cited, where the tax rate limit was not exceeding one-half of one per cent., and the bonds were held valid.

Under the decisions of the Supreme Court of North Carolina this constitutional provision does not affect the validity of the bonds, and in no view of the case could affect more than the method of having a valid, existing and binding obligation *paid*.

"The legislative practice has uniformly been, as far as we know, to give approval in advance, and thus

confer the requisite legal authority to levy special taxes beyond the assigned limits, though, if given after the levy, it would doubtless be equally effectual" (*Cromartie vs. Commissioners*, 87 N. C. Reps., on p. 140).

And in *Herring vs. Dixon*, 122 N. C., on page 423, the Supreme Court of North Carolina again distinguishes between the power to contract a valid indebtedness without special legislative sanction and the power to levy a tax to pay said indebtedness when it says:

"In *Vaughn vs. Commissioners*, 117 N. C., 429, while it was held that the commissioners could *incur a debt* for necessary expenses, without a vote of the people, it was not held that they could *levy a tax* in excess of the constitutional limit to pay it without special approval of the legislature."

So under the rulings of *Cromartie vs. Commissioners* and of *Herring vs. Dixon* the commissioners have the right to contract a valid debt without a special act, but only the process of collecting its payment would be affected by section 6, article 5, of the Constitution.

But this argument is unnecessary, as the record contains no evidence whatever that the payment of this obligation by the county will require a tax exceeding double the State tax.

FURTHERMORE, THIRD *even if there be this tax-rate limit in Article V., Section 6 of the Constitution of North Carolina, that is a mere limit. It does not appear as a matter of law on the face of the Constitution, or on the face of these Sections of the Code, or on the face of these bonds, that in the instance of these particular bonds of Stanly County the tax-rate limit would*

be exceeded. Whether or not this tax-rate limit would, as a fact, be exceeded, as a matter of pais, of which the holder of a negotiable bond, like the bonds in question in the present case, is not bound to take notice (See Point I. of this Brief, *supra*). Moreover, as above stated, there is no proof in the present case that the county tax for these bonds would exceed double the State tax.

These Sections of the Code are PROSPECTIVE IN THEIR OPERATION, **and they are not limited to any railroad which has been begun either before the constitution of 1868 was adopted or before the adoption of these Sections of the Code by the Act of April 10, 1869.**

The language of Section 1996 of the Code is: "The Board of Commissioners," etc., "*shall have* power to subscribe stock," etc., to aid in the completion of any railroad in which the citizens of the county *may have* an interest." *All this is future.* It applies to any railroad in which the citizens of the county may have an interest, either when the act was adopted *or at any time afterwards.* **The substance is that the interest is one which exists at the date of the election.** There is nothing in this language which restricts the operation of the act either to the time of the adoption of the constitution of 1868 or to April 10, 1869, the time of the first enactment of the statute which became these provisions of the Code. Any of the recent decisions of the Supreme Court of North Carolina to the contrary are wholly indefensible, and have no support in the language of these sections

of the code. Inasmuch as all of these decisions were rendered after these bonds were issued, they are not binding upon the Federal Courts (See *Folsom vs. Ninety-Six*, 159 U. S., 61, and numerous other cases in this Court).

Erroneous Construction of the Word "Completion," in Section 1996 of the Code by the Supreme Court of North Carolina in its Late Decision in the *Stanly County Case*, 121 N. C., 394, 1899.

The Supreme Court of North Carolina, at this late day, in *Commissioners of Stanly County vs. Snuggs*, 121 N. C., 394 (1899), has taken a very narrow view of the word "completion." It has undertaken to say that these sections of the Code refer only to a railroad which had been begun, and that the word "completion" is not synonymous with "construction," but that the language here requires that there must have been an unfinished road.

The Court went further, and held that there must have been a road unfinished *at the time of the adoption of the constitution*, April 24, 1868, in order that these sections of the code might have application. This interpretation of the word "completion," we submit, is not the correct one.

It seems obvious that it is used as synonymous with the word "construction." This view is supported by the obvious difference between this language and the language used in the state constitution as respects the issue of state railroad aid bonds. Article V., Section 4, of the constitution prohibits the issue of State railroad aid bonds, "except to aid in the completion

of such railroads as may be *unfinished at the time of the adoption of this constitution*" (See Appendix to this Brief). Section 1996 of the Code, adopted April 10th, 1869, about one year after the framing of this provision of the state constitution, omits the significant words—namely, "unfinished at the time of the adoption of this constitution." On no possible theory can these words be read into the statute. The legislature did not put them there, and the courts cannot put them there.

The opinions of SIMONTON, J. (Rec., p. 50), of MORRIS, J. (Rec., pp. 86 87), and of BOYD, J. (Rec., pp. 95–97), contain able and satisfactory discussions of this point as well as the question of "interest of the citizens of the County," to which opinions we especially refer this Court.

Further, as to "completion" required by the Code, see this argument (*post* p. 52), answering the positions of the counsel for the county on this point.

Erroneous Construction in the *Stanly County Case* by the State Supreme Court of the Words "any Railroad in which the CITIZENS OF THE COUNTY MAY HAVE AN INTEREST," in said Section 1996 of the Code.

The Supreme Court of North Carolina held in the *Stanly County Case* (121 N. C., 394, 1899) that the words of Section 1996 of the Code, "the citizens of the county may have an interest," do not mean exactly what they state, but hold that they require that the county, *as a county*, shall have a *pecuniary* interest in the railroad, in order that Section 1996 may apply to it. On this point it seems only necessary to state that

no such words occur in Section 1996. This construction by the Supreme Court of North Carolina takes out the words "*the citizens*" and inserts the word "*pecuniary*," and thus it holds that the words "any railroad in which the citizens of the county may have an interest" are to be construed as follows, to wit: "Any railroad in which the county has a pecuniary interest." A mere statement of such a distorted construction of this language of the Code is enough to refute any such construction.

Here, too, again we may call the attention of this Court to the language of Article V., Section 4, of the Constitution of the State of North Carolina when it was dealing with the question of the right of the State to issue railroad aid bonds. There it refers to a railroad "in which the State has a *direct pecuniary interest*. [For text of said Section 4, see Appendix to this Brief]. This Section 1996 of the Code was adopted about one year after the said Article V., Section 4, of the Constitution. Doubtless the legislators had before them this provision of the constitution, or, at least, were familiar with it. The difference in the language was obviously intentional and significant.

The history of the adoption of this provision of the State Constitution (Art. 5, Sec. 4) as to State Railroad Aid bonds shows that it had a different purpose from that of the Code (§§ 1996-2000).

What is now Section 4 of Article V. of the constitution was originally reported to the Constitutional Convention of 1868 by the committee on finance as follows:

"Until the bonds of the State shall be at par, the General assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State,

except to supply a casual deficit, or for suppressing invasion or insurrection, unless it shall be in the same bill levy a special tax to pay the interest annually" (Journal, p. 354).

An amendment was proposed as follows:

"And the General Assembly shall have no power to give or lend the credit of the State in aid of any person association or corporation, except to aid in the completion of such railroads and other works of internal improvement as are unfinished, and in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon" (Journal, p. 354).

This proposed amendment was further amended as follows:

Mr. Tourgee moved to amend by striking out "are" in the fifth line and inserting "may be;" insert after the word "unfinished" in the fifth line "*at the time of the adoption of this constitution.*" Strike out "and" in the fifth line and insert "or." This amendment of Mr. Tourgee's was accepted, and the proposed amendment, as amended, was adopted (Journal, p. 354).

On pages 85 to 90 of the convention journal is a report made January 29th, 1868, by the Treasurer of the State to the President of the convention as follows:

"SIR—I have the honor, in response to the resolution of your honorable body requesting me to furnish the convention a 'statement of the indebtedness of the State, to what parties or sources, what amount to each, what is the amount of her indorsement for railroad or other improvements, what further indorsement of railroad bonds she is directed to make under any existing law or regulation, and, when passed, what property, or assets, or securities, said State holds for or on account of said indebtedness, what amount of stock the State holds in the several corporations of this State, and

what amount of dividend or interest she receives annually from each source.'" * * *

The report of the State Treasurer shows that, prior to the meeting of the convention, the State had undertaken to issue its bonds in aid of certain railroads, and that, under the statutes then existing, the State was liable to be called upon for the issue of additional bonds, or for the guaranty and payment of additional bonds, and the State owned stocks in certain railroads, thus having a direct pecuniary interest in them. The amendment made to Section 4, Article V., of the Constitution above quoted was designed to enable the State, *without a vote of the people*, to carry out its contracts already entered into on railroads, &c., already begun and to protect its interests in the railroads, &c., already begun. *With a vote of the people* the State was allowed to aid railroads without restriction.

As the Constitution, Article VII., Section 7, did not allow counties to incur any debt in any case (except for necessary expenses) without a vote of the people, the reason for the provision as to *unfinished* railroads in case of State aid, did not apply to counties, and was purposely omitted in the Act of April 10, 1869 (now Sections 1996–2000 of the Code).

Our view is supported by the following decision rendered by the North Carolina Supreme Court in 1869, the year following the Constitutional Convention.

In *Galloway vs. Chatham Railroad Company*, 63 N. C., 147, the suit was to enjoin an issue of State bonds in aid of the railroad company. The Court held that the bonds were unauthorized under the provisions of the constitution. In the course of the opinion

(PEARSON, C. J., giving the same) the Court say, with respect to the restrictions on the power of the State to incur debt, speaking of the debt existing at the time of the adoption of the Constitution of 1868 (p. 153) :

"It will be found that most of the public debt was incurred in three modes : 1st, by subscribing for stock in railroad and navigation companies, and issuing bonds to pay for the stock, the state becoming a member of the corporation : this is the heaviest item, and amounts to, say, eight millions of dollars ; 2nd, by issuing bonds of the state and exchanging such bonds for a like amount of the bonds of the corporation, the state not becoming a stockholder and taking collateral security of more or less value ; this is the next heaviest item, and amounts to about three millions of dollars ; 3d, by endorsing the bonds of corporations and taking a mortgage or some other collateral security ; this item amounts to about two millions.

These are the three modes by which, judging from the past, it was apprehended the public debt might be so run up as to ruin the credit of the state and tarnish her honor and her reputation for good faith.

* * * (p. 155). The suggestion that the credit of the state was given by this statute to aid in the completion on an *unfinished railroad* was not strongly urged on the argument, and indeed it could not be. An unfinished road is one that has been begun and partly worked on, and such a road is made an exception, on the ground that it might be proper to finish it in order to prevent a sacrifice of the work that had been done. There is no evidence that such was the fact in regard to this road. The other suggestion, that the state has a direct pecuniary interest in this road, was properly abandoned. The word '*has*' is in the present tense. The exception is obviously confined to roads in which the state had a direct pecuniary interest at the time of the adoption of the constitution ; otherwise, the state might, by a subscription for stock, become directly interested in every railroad or navigation scheme that should thereafter be projected, and thus the restrictions of the constitution would be of no effect whatever."

Note the difference between the language of the Constitution (Art. 5, Sec. 4) as to *State* aid bonds and the

language of the Code as to *county* aid bonds. The Constitution says '*has*,' and note the comments of the Court on the present tense. The Code says "*may have*," &c., &c.

Of course such of these decisions of the Supreme Court of North Carolina as were rendered after the bonds in question in the present case were issued are not binding upon this Court, and it is both the right and duty of this Court to construe this language of Sections 1996–2000 according to its natural and proper meaning.

Observe that the language of Section 1996 of the Code is not any railroad in which the *county* may have an interest, but any railroad in which *the citizens of* the county may have an interest; and therefore any financial interest of the county itself as a corporate body in the railroad, which is contended for by the learned counsel for the county, is utterly out of the question. Any such construction disregards the words "the citizens" and strikes them out of the statute.

The interest which Section 1996 of the Code contemplates that the citizens of a county may have in a railroad to be aided is clearly not a financial interest as stockholders. It would be the height of absurdity to suppose that this section of the Code meant that ALL *the citizens of the county must be stockholders* in a railroad, and thus have a financial interest in the railroad as a condition precedent to the county subscribing stock to the company. What an absurdity to suppose that this section of the Code contemplated that every man, woman and child in the county should own stock in the railroad company before the county could subscribe stock to the company.

Neither can Section 1996 of the Code contemplate

that it is necessary that *some* citizens of the county have a financial interest in the railroad *as stockholders* as a condition precedent to the county subscribing stock to the company. If this section read in this way, then if *some* citizens of the county owned stock in a railroad company which did not touch the county, and which was fifty or a hundred, or even two hundred miles distant from the county, nevertheless the Section 1996 of the Code so construed would give power to the county to subscribe to the stock.

None of these absurdities was intended by said Section 1996 of the Code. The word "interest" in this section must be construed in a rational way with reference to the subject matter, and when it is so read, it is clear that the interest spoken of is **the interest that the citizens of the county might have in any public improvement.**

"What else does this doctrine mean, if not that building a railroad, though it be built by a private corporation, is an act done for a *public use?* And the reason why the use has already been held a public one is that such a road is a highway, whether made by the government itself or by the agency of corporate bodies, or even by individuals, when they obtain their power to construct it from legislative grant" *(Olcott vs. Supervisors*, 16 Wallace, 678).

Within the meaning of Section 1996 of the Code the citizens of a county have an interest in any railroad running through the county, and which would thus be a public benefit to such county and its people.

No "policy" of the State against Railroad Aid Bonds. Provision as to "unfinished" Railroads Applies Only in Case of State Aid Bonds.

The learned counsel for the county has heretofore attempted to make an argument that there was a *policy* of the State of North Carolina, as evidenced in the constitution of that State, adopted in 1868, against issuing railroad aid bonds by either the State or counties, except in aid of roads which were unfinished at the time of the adoption of the constitution. There was no such policy. The policy was just the contrary. The policy was this—that no State bonds should be issued to aid any *new* railroads unless there should be a vote of the people, but with such a vote the State could aid any railroad, whether it had been begun or not at the time of the adoption of the constitution. If the railroad had been begun and was unfinished at the time of the adoption of the constitution, State bonds might be issued in aid thereof without any vote of the people.

As to counties, there was no distinction made as to whether the road was finished or unfinished at the time of the adoption of the Constitution. A vote of the people of the county was required for the issuance of railroad aid bonds of a county in either case, whether a road had been begun or was a new railroad, and there was absolutely no distinction whatever made in the Constitution between new roads and unfinished roads so far as respects county aid, and no such distinction existed in the Code, or in any other provisions of the statute. Thus the public, constitutional policy was to allow the issue of county railroad aid bonds in

any case on a vote of the people (Art. II., Sec. 14; Art. VII., Sec. 7, quoted in APPENDIX, *post*, pp. 72, 74).

Even the learned counsel for the county would admit that if there had been a special act authorizing the issue of these bonds, or if the act of March 3, 1887, had been properly enacted by the Legislature, there would have been clear constitutional power to issue these bonds. How, then, can the learned counsel seriously argue that the Constitution of the State of North Carolina has adopted any policy as against the issue of county railroad aid bonds.

Further, as to Code Sections 1996-2000. These sections give power to issue the bonds. The objections of the County further answered.

The learned counsel for the county in his previous argument in this case, said in substance, in regard to the Code provisions, Sections 1996 to 2000, originally adopted April 10, 1869, these are to be construed the same as the provisions in the Constitution of the State, Article V, Section 4, in regard to the issue of railroad aid bonds by the State, stating: "It was deemed a part of the policy of the State to place its subdivisions under the same restrictions as the state, by preventing them from aiding in the completion of a road not then begun." There is not anything in the Code or in any of the statutes or in the Consti-

tution of the State which supports any such view. The significant language of Article V., Section 4, of the Constitution of the State, as applied to *State* railroad-aid bonds, is purposely omitted when the Constitution deals with *County* bonds in Article VII., Section 7, and is purposely omitted from the said provisions of the Code.

The Supreme Court of North Carolina, in *Commissioners of Stanly vs. Snuggs*, 121 N. C., 394, 1899, committed an obvious and glaring error in holding that the same provisions applied to a *County* as to the *State*.

We may note in passing that the learned counsel for the County, in dealing with Article V., Section 4, of the Constitution of North Carolina in connection with his argument in respect of Code Sections 1996 to 2000, would omit the significant words "*a direct pecuniary*," so that he would make a clause in that section, as respects State aid, read "a railroad which may be unfinished at the time of the adoption of the constitution, or in which the state has *an interest*," whereas that section of the Constitution really reads, "except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution, or in which the state has a *direct pecuniary* interest, unless the subject be submitted to a direct vote of the people of the State," etc. The claim of the learned counsel—that a "direct pecuniary interest" is required in the case of *County* bonds—is erroneous, and the decision of the Supreme Court of North Carolina in the case of *Stanly County vs. Snuggs*, 121 N. C., 394, is plainly erroneous.

The learned counsel for the county speaks of the case of *Stanly County vs. Snuggs*, 121 N. C., 394, and says, in substance, that in that case the words in Code

Section 1996, Act of April 10, 1869, "in the completion of any railroad in which the citizens of the county may have an interest" were construed as speaking of railroads *unfinished* at the time of *the passage of the act or the adoption of the constitution.* The fact is the Court, in the case of *Stanly County vs. Snuggs*, held that those words in the Code were retroactive and went back to the time of the adoption of the Constitution (April 24, 1868), although there was not a word or syllable in the said Code, or in the Act of April 10, 1869, to indicate that they were intended to have any such retroactive effect. The learned counsel has argued in his briefs heretofore presented:

"It was deemed a part of the *policy* of the state to place its subdivisions under the same restrictions as the state, by preventing them from aiding in the completion of a road not then begun."

The fact is that there was "no policy of the state" to prevent a county from aiding in the completion of a road not begun at the time of the adoption of the Constitution, or at the time of the passage of the Act of April 10, 1869, nor even to prevent the *State* from aiding such road. The restriction was that a *county* should not aid any road begun, or not begun, unless by a vote of the people. The restriction on the part of the State was less than this—to wit, the State was permitted, *without* a vote of the people, to aid any railroad which had been then begun, and was permitted to aid *any* railroad (begun or not begun) *with* a vote of the people.

The learned counsel for the county would omit from his quotation of Article V., Section 4, of the Constitution, the significant words "*a direct pecuniary*" [interest], which apply only to *state* railroad aid *without*

a vote of the people, and then goes on seriously to argue that the same direct pecuniary interest is necessary in the case of aid by a county, although neither the code nor the constitution makes any such provision. The bare statement of such an argument is enough to refute it.

Mistake of counsel for the county in stating that the construction given Section 1996 of the Code by the United States Circuit Court of Appeals makes part of said section surplusage.

In the brief of the learned counsel for the county it is stated in substance that half of Section 1996 is declared surplusage by the United States Circuit Court of Appeals in order to lean against the construction given by the State Court. This is clearly an error. The part of Section 1996 which the learned counsel for the county seek to show is regarded as surplusage by the United States Circuit Court of Appeals is the last part, to wit : " when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." If these words were rejected, the section would then read : "The Boards of Commissioners of the several counties shall have power to subscribe stock to any railroad company or companies." This would allow a county in the extreme western part of North Carolina to subscribe to stock of a railroad company in the extreme eastern part of North Carolina, hundreds of miles from the subscribing county. No one contends or has contended for any such construction of Section 1996 of the Code. The construc-

tion given to this Section 1996 of the Code by the United States Circuit Court of Appeals and the proper construction of the said section is that these words, " when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest," do have a meaning and they mean that stock can only be subscribed to aid in the completion of a railroad in which the citizens of the county **are interested as a public improvement for the use and good of the public.** The words in Section 1996 are fit and apt to express exactly this meaning and they do not require any other meaning to be given to them. This is the natural meaning, a meaning which gives to the section a practicable construction, and not one which gives it an impracticable construction such as is contended for by the learned counsel for the county. The learned counsel for the county must reject altogether the words " *the citizens* " and strike them out of this section in order to give to the section the meaning for which they contend. They must also insert before the word interest the word " pecuniary " in order to have any such construction given to this section of the Code as they contend for.

Thus, it is clear that it is not the construction which was given to this Section 1996 of the Code by the United States Circuit Court of Appeals, but the construction which the learned counsel for the county would place upon the section which does violence to the language of the section and strikes out part of the section and inserts words which are not found there.

The numerous decisions cited by the learned counsel for the county to show what the words " interest " or " interested " mean when used in other statutes relating to other matters have absolutely no bearing

whatever on the construction of the word interest in Section 1996 of the Code.

We notice that the learned counsel for the county find it necessary as a part of their argument to support their construction of Section 1996 of the Code to advance the proposition that the citizens of the county, "*by reason of vicinage, had no other or greater interest*" in a railroad running near or through the county than any other citizens in the State. This proposition is so manifestly absurd and false that it carries with it its own condemnation. Do the learned counsel for the county mean to tell us that in the case of a county which like Stanly County has no railroad the citizens of the county have no interest in having a railroad constructed through the county or have no other or greater interest than any other citizen of the State who lives hundreds of miles away from the county and away from the place where the railroad is to be constructed? We will not waste the time of the Court or our own time in answering any such obviously false and absurd proposition.

So, also, whether or not the railroad had been begun before April 10, 1869, or even before the adoption of the constitution (April 24, 1868), was a fact in pais to be determined by the county Commissioners before they issued the bonds, and not a matter with which the bona fide purchaser of these negotiable municipal bonds is concerned.

The Code of North Carolina is one act (Code, Section 3876), and went into operation November 1st, 1883 (Code, Section 3866).

At the end of Volume 2 of the Code, at bottom of page 603, *it is declared that the requirements of Section* 14, Article 2, of the Constitution of North Carolina, have been complied with in the passage of the Code; and this is also admitted.

It is admitted that the Board of Commissioners was proceeding under the provisions of Sections 1996 and 1997 of the Code, as well as under the act of March 3, 1887. If this be true, then the bonds are valid, notwithstanding the recitals in the bonds, provided the Code provisions conferred the power to issue them on the board.

Knox County vs. Ninth Nat. Bank, 147 U. S., 91.
Cairo vs. Zane, 149 U. S., 122.
Anderson, &c., vs. Beal, 113 U. S., 227.
Evansville vs. Dennett, 161 U. S.
Wilkes County vs. Coler, 180 U. S., 506.

Further Answer to Objections of County.

But the County contends that these sections did not authorize the issuance of the bonds for the following reasons :

Re the "interest of the citizens of the county."

In addition to what we have already said on these subjects (*ante*, pp. 13, 37, 43, 48), we add the following:

The appellants further contend "that said sections of the Code failed to authorize the issue of said bonds, because said Railroad was not, within the meaning and proper construction of Section 1996 of the Code, one in which the citizens of the County of Stanly had *an interest*."

Aside from the common sense of the matter, the grammatical construction of Section 1996 forbids the interpretation put on it by appellants—to wit, that, before a vote could be taken by the citizens of Stanly County, the said citizens must have a direct pecuniary interest in the road ; that is, must be stockholders in the road. The words of the statute are " in which the citizens of the county may have an interest."

The words are not " citizens of the county may have an interest," or " certain citizens," but " *the* citizens of the county."

So, if the pecuniary interest is meant, *every citizen* of the county must have stock before a county subscription could be voted, which is a *reductio ad absurdum*. But, if this was meant, the statute should have read, " in which the citizens of the county may have interests." So that, assuming that this interest means a pecuniary interest, every citizen of the county must have stock, and that stock must be " an interest," or, in other words, that stock must constitute only one interest, one block of stock, owned in joint ownership by every citizen of Stanly County—a palpable absurdity.

Re the " completion " required by the Code.

Earlier in this brief we discussed the subject of the meaning of the word " completion " in Section 1996 of the Code, and the erroneous construction thereof by the Supreme Court of North Carolina in the Stanly County case (see *ante*, page 35 *et seq*). We now submit some other observations on the subject of " completion " in answer to the positions and arguments on this subject taken and advanced by the counsel for the county.

It is also objected by the attorney for the County Commissioners, "Nor was the subscription made necessary to aid in the completion of the same" [that is, the railroad).

"No reasonable construction of this act will require that the road be aided should be actually built before the county was authorized to give it aid. That theory would, no doubt, add greatly to the security of the county and would relieve it from many of the perplexing questions which so commonly arise. If, however, the road were actually built, no aid would be needed in its construction. The aid might, in that event, be useful to its stockholders, or might relieve it from embarassments, but a road which is built can neither need nor receive aid in its construction. That is a fact accomplished" (*Kennicott vs. Supervisors*, 16 Wallace, 452).

Another defense has been urged in and sustained by the State Court, to wit: That the provisions of section 1996 refer to only those roads that were *unfinished in April, 1868, the time of the adoption of the constitution of 1868.*

"This reasoning leads us," says the Supreme Court of the State, "to the still further conclusion that, at the time when the act 1868–9 was brought forward in the Code, Section 1996, and the four succeeding sections, it could have had reference to no cases, except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the Constitution of 1868" (*Commissioners vs. Snuggs*, 121 N. C., on page 403, 1897).

This was first decided in 1897 and is one of the most astonishing legal solecisms into which so able a Court ever fell. The statute of April 10th, 1869, Section 1996 of Code, made no reference to the Constitution of 1868, nor to any other point of time in the past. Every word in Section 1996, denoting tense, is in the

future tense, and the Code went into effect November 1st, 1883 (See *ante*, p. 35, as to the *prospective operation* of these Sections of the Code.)

It is a universal rule of construction that all statutes are prospective in their operation, unless the statute itself says to the contrary.

" No statute should be given a restrospective operation unless its words expressly require such construction " (*State vs. Littlefield*, 93 N. C., 614).

What words in Section 1996 require that its operation be referred back to April, 1868, fifteen years before it was re-enacted in the Code, and one year before it was ever put in any shape on the statute books of North Carolina? Upon the same false principle of construction (a principle that can find no support in any book ever written on the subject), if Section 1996 should be re-enacted in the Code of 1900, it would have no application to any road that might be built during the next century, but would apply to roads incomplete in the year 1868, thirty-two years before its enactment!

But this very principle has been passed on by the Supreme Court of the United States in *James vs. Milwaukee*, 16 Wall., 159. In that case a statute authorized a city to lend its credit to any railroad company incorporated and organized; and this Court held that companies thereafter organized were intended to be included, and the statute was applicable to them, as well as those then in existence. This Court said (pp. 160, 161):

" The defendant in error insists that the power conferred was confined to companies already in existence at the date of the act, and such was the opinion of the court below. We entertain a different opinion."

In that case, there was no word denoting the future tense, no "shall," as in Section 1996, but the only words used were the adjectives, "incorporated and organized."

The cases relied on by the county's solicitors, concerning the power to tax, being conferred by special act, in answer to the contention on the part of complainants, that the Commissioners had the power to issue the bonds under the sections of the Code, set out above, can have no application to a case of the kind at bar. The Supreme Court has said, in a late case, *City of Charlotte vs. E. D. Shepard & Co.*, 122 N. C., page 603, that "where such a corporation," speaking of a municipal corporation, "has thus acquired the right to create a debt, and issue the bonds, *this power carries with it*, the power to levy the taxes necessary to pay said bonds, and the accruing interest thereon (*Ralls vs. County Court*, 105 U. S., 733; *U. S. vs. New Orleans*, 98 U. S., 381).

Negotiability of Municipal Bonds and What Negotiability Means.

We need not remind this Court that municipal bonds payable to bearer are negotiable with all that the word negotiable implies. Of course there must be power to issue the bonds, that is, a statute or other legislative enactment authorizing the issue of the bonds on some facts and under some circumstances. There is then, using the words often used by this Court "power to issue." Where this power to issue municipal bonds exists and bonds have been in fact issued in negotiable form, such bonds are negotiable paper with all that the word negotiable implies. The *bona fide* holder of such a

bond is not affected by any equities in favor of the maker of the bond. It is no defense to such a negotiable instrument that certain facts *in pais* did or did not exist before the bond was issued or when the bond was issued.

If the rule were otherwise, then every intending purchaser of a negotiable municipal bond, as for example a purchaser of the bonds of Stanly County, in the City of New York or in the City of London, would be bound to take a journey to Stanly County, North Carolina, and would be obliged at his peril and at all hazards to ascertain for himself whether or not the facts *in pais* which the county might set up as a defense to its bonds did or did not exist, and this would be true not only of the first purchaser of the bond from the county, but of all subsequent purchasers however remote and for all the time that the bonds would be outstanding. Thus, for example, an intending purchaser of such a county bond ten, fifteen or twenty years after its issuance would be obliged at his peril to ascertain and enquire, as the learned counsel for the county now seeks to maintain, whether or not at the time of the issuance of the bonds the citizens of the county had an interest in the railroad, whether or not the railroad had been in fact begun before a certain date, and other similar facts. How could any purchaser of a bond ten, fifteen, twenty or thirty years after its date ascertain any such facts?

No record required to be kept of such facts as are now set up by the county as a defense.

No statute required the county to keep any records of any fact as to whether or not the citizens of the county had an interest in the railroad or as to the date

when the railroad was begun, or other similiar facts, and even if the statute had required any records to be kept, it would require a further provision in the statute that such records should be constructive notice to all persons of the facts therein required to be stated. In the absence of any such provisions, the purchaser, who under the theory now advanced by the county must at his peril and at all hazards ascertain regarding these facts, could not rely upon any records.

How could a purchaser of these negotiable Stanly County bonds who bought them in the City of New York or in the City of London be expected to make a journey to the County in North Carolina, to ascertain these facts before he purchases the bonds? Who would buy any municipal bonds under such circumstances and with such a burden resting upon him? But even if he were willing to take that burden and sought in good faith to ascertain the facts, what sort of an inquiry must he make? Must he go to the county and open a kind of court of inquiry and ascertain by bringing in all the old settlers in the place who are accessible and obtaining their recollections, such as they might be, as to what were the facts in the matter? Even the conclusions arrived at by such a court of inquiry would not be conclusive but they would be always open to contest in any action on the bonds. It would be absolutely impossible, therefore, for an intending purchaser in the City of New York or in London ten, fifteen, twenty or thirty years after the issuance of the bonds by any such inquiry to determine conclusively whether or not the facts *in pais* existed before or at the time of the issuance of the bonds.

But all these mistaken views of the counsel for the

county arise from ignoring the principle that the county officers constitute a tribunal which is to determine once and for all time whether the facts *in pais* required by law to exist precedent to and in the issuance of the bonds do exist. A statute when it empowers county officers to issue bonds when certain facts and circumstances exist contemplates that these officers are a tribunal to determine whether or not the facts exist, and the issuance of the bonds by such officers is their determination made once and for all that such facts exist. Such officers are elected by the people of the county to represent the people of the county, and to them the Legislature confides the function and power of issuing negotiable bonds. Such officers, those elected and those legally entrusted with this power, constitute the tribunal, and the only tribunal to ascertain these facts *in pais*. If such facts cannot be ascertained by such a tribunal, then there is no way by which they can be ascertained.

If after negotiable bonds have been issued by a county or other municipality it is open at any time to the county, five, ten, twenty or thirty years afterwards, to set up as a defense to the bonds in the hands of a holder for value and without notice that a certain fact *in pais* did or did not exist, *then such bonds are not negotiable according to the law merchant*, but would be reduced to the class of obligations known as mere choses in action, open at all times and in the hands of any *bona fide* holder to any defense whatsoever which could be set up in respect of any non-negotiable obligation. It would be nothing but a solemn mockery any longer to designate any such obligation as a *negotiable* bond.

But even if any statute should require any record whatever to be made concerning the facts, it would not follow that merely because records were to be kept that, therefore, the bonds are non-negotiable, and that every purchaser of the bonds must go and consult the records and satisfy himself at his peril in regard to the facts. Something more than that would be necessary; it would be necessary that the statute should expressly provide that such records should be constructive notice of the facts. Let this once be understood and let defenses like this prevail against municipal bonds and the market for municipal bonds is gone. We do not believe this Court will give its assent to any such doctrine.

What better tribunal could there possible be for the determination of all these matters *in pais* than the officers who issue the bonds. It is for the interest both of the municipality and of the investing public that these matters be determined somehow and determined conclusively before or at the time of the issuance of the bonds. The officers elected by the citizens of the county and having by law the charge of the affairs of the county, are really the agents of the county; they act on behalf of the county. It is for the interest of the county that it should be able to have some officers to represent it and to bind it by their acts; otherwise how is the county ever to act or to carry on its public business? There is no more injustice to the county in holding that these officers of the county represent the county, and that their acts bind the county when they issue municipal bonds than when they do other acts on behalf of the county.

Suppose an intending purchaser of county bonds

goes to the county and says, "I would like to buy your bonds, but I want to be sure before I buy them that all the facts and conditions exist on which you are authorized to issue the bonds, and I want this matter settled so that when I take and pay for the bonds I may know that the question cannot be reopened and so that any one to whom I sell the bonds will not be bound to make any examination of these facts." Why should not the county be permitted to say in reply, "These facts have been investigated by our officers, chosen as required by law, to represent us in the matter. Our officers have investigated these facts and are satisfied that they exist and the county is willing to be bound by their action, and the county will issue to you its negotiable bond, which is an unconditional and incontestible obligation, so that neither you nor any subsequent holder of this bond to whom you may desire to sell it shall be bound to investigate into all the facts preliminary to its issuance, but the absolute obligation of the county is determined once and for all."

Why should not the county be permitted to have its officers thus represent it in the ascertainment of all these facts? It is the only practicable thing to do. It is absolutely impossible for each bondholder and each subsequent purchaser of the bonds to make an investigation of the facts for himself. If the obligation of the county is ever to be made unconditional and incontestible, why should it not be made so by the action of the county officers in the issuing of a bond negotiable in form and in fact cutting off, as against *bona fide* holders for value, all equities and defenses on the part of the county?

These principles of the negotiability of municipal bonds and the results that flow from such negotiability have been most emphatically stated by the Supreme Court of North Carolina in the case of *Belo vs. Commissioners of Forsyth County*, 76 N. C., 489 (1877), before the bonds in question were issued. In that case the Court said :

"Such bonds can be issued only in pursuance of a special grant of power, and the party claiming the benefit of such bonds must show a power in the corporate body to issue them, but if he is a purchaser for value without notice and before maturity, he need do no more. If a municipal corporation has the power to issue bonds only on a compliance with conditions precedent, as for instance, as here, in pursuance of a popular vote, and the bonds are issued, the presumption is that the conditions have been observed, and that they are *prima facie* valid, though the defendant may show the contrary unless he is estopped by his own acts from doing so. The principle, however, of equitable estoppel is a most important element in the transaction, for whether conditions precedent have been complied with is a matter of fact to be determined by some tribunal invested with the power and authority to decide it and the decision when made should be final. It is not disputed that the power to make a subscription of stock and to issue the bonds was conferred upon the County of Forsyth by the ordinance of the Convention. It is equally clear that the tribunal which was authorized to issue the bonds only on compliance with the conditions precedent was the sole tribunal to determine the fact whether the conditions had been fulfilled. In this case the Justices of the County, a majority concurring, was the court or tribunal designated to carry the law into effect and was the tribunal to decide whether the conditions had been complied with, and their decision is final in a suit by a *bona fide* holder of the bonds against the municipality. This determination of the question of fact by the Justices is manifested in two ways: first, by the records of their court, and second, by the recitals in the bonds issued by them."

As Mr. Justice HARLAN states, in the recent case of *Gunnison County Commissioners vs. E. H. Rollins & Sons*, 173 U. S., 255:

"Indeed, it is entirely competent for a state to provide by statute that all obligations, in whatever form, executed by a municipality existing under its laws, shall be subject to any defense that would be allowed in case of non-negotiable instruments. But, for reasons that everyone understands, no such statutes have been passed. Municipal obligations executed under such a statute could not be readily disposed of to those who invest in such securities."

Conclusion.

In the *Charlotte* (North Carolina) *Daily Observer*, February 3, 1898, is an able article by Lindsay Patterson, Esq., entitled "Stanly County Bond Case," in which with great clearness and force he attacks and demolishes the doctrine of the Supreme Court of North Carolina that the Act of April 10, 1869, Code, Sections 1996 to 2000, authorized the issue of county bonds only in cases where the railroad in question had been begun before the adoption of the Constitution in 1868. The same writer shows, what is also true, that in order that these sections of the Code may authorize the issue of bonds, the railroad need not have been begun before April 10, 1869, when the matter of these sections was first enacted. We reprint the said article substantially in full as an Appendix to this brief, and submit to the respectful consideration of this Court that the conclusions therein stated and the argument in support thereof are sound. We adopt these as our own, and make them part of this brief. We can see no escape from them.

This Court, therefore, should hold said bonds valid, and the decree of the Circuit Court of Appeals should for the foregoing reasons be affirmed.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
CHARLES PRICE,
Of Counsel for Respondents.

APPENDIX TO BRIEF.

Argument and Views of Lindsay Patterson, Esq., of North Carolina.

STANLY COUNTY BOND CASE.

DECISION OF THE SUPREME COURT.

A Review of a Case That Embodies Principles of Far-Reaching and Dangerous Effects. If the Decision Stands It will Destroy the Fundamental Principles of Popular Government. The Courts Can Construe Statutes, But Have No Right to Radically Change Them.

TO THE EDITOR OF THE "OBSERVER":

The decision of the Supreme Court of North Carolina, which holds that the ratification of an act of the General Assembly can be inquired into in a collateral way, seems to be sustained by a long array of authorities, although there are decisions of the highest Courts in some of the States that hold the opposite. But whether sustained by the weight of authority or not, which matter is not germane to the present discussion, the principle on this point, as enunciated in the case of the town of Oxford and in the Stanly county case, must be accepted as the law in this State until it is changed by this or some subsequent court.

But the decision in the Stanly county case embodies principles much more far-reaching and dangerous in their effects than the mere declaration that the Supreme Court has a right to inquire whether the constitutional provisions have been compiled with in the passage of an act by the General Assembly.

It was admitted that The Code was properly passed,

and so, even, if the special acts incorporating railroad companies are not properly passed, my position is that the issuance of bonds by the counties is valid under sections 1996 to 2000 of The Code.

The attempted repudiation of hundred of thousands of dollars of honest debts by certain counties of the State has aroused public sentiment, and very rightly; for every citizen in the State has an interest in the matter, and many citizens of the State have direct pecuniary interest in it.

The constitution of 1868 was ratified in April, 1868. Article V, section 5, thereof, reads as follows: "And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon."

Twelve months thereafter, on April the 10th, 1869, the General Assembly, composed of a different body of men, passed an act, the first section of which reads as follows:

SECTION 1. "The General Assembly of North Carolina do enact: That the county commissioners of the several counties in this State shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

The other sections refer to the manner in which the elections shall be held and to other matters. There is absolutely no reference in the act to the constitution. It is not mentioned. The act has no more reference to the constitution of 1868 than it has to the constitution of the United States, adopted one hundred years ago. This act of the General Assembly was never repealed but was brought forward as sections 66 to 70 of chapter 99 of *Battle's Revisal*, in the following language: Section 66: "The county commissioners of the several counties in this State shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." And this enactment went into effect January 1st, 1874.

It was again brought forward as sections 1996 to 2000 of The Code and went into effect November 1st, 1883, in the following language: Section 1996. "The boards of commissioners of the several counties shall have power to subscribe stock to any railway company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." And there has not been a day since April 10, 1869, that this statute has not been a living, vital statute of the State. Three General Assemblies of the State thus passed on it and saw no need of clearing up any ambiguities in it.

These Assemblies in substance said:

"We say what we mean and mean what we say."

These General Assemblies knew the condition of affairs in 1869, and in 1873, and in 1883, just as well, if not better, than those of the present generation. What does the Supreme Court say about these sections in The Code. It says: "This reasoning leads us to the still further conclusion that at the time when the act of 1868 and 1869 was brought forward in The Code, section 1996, and the four succeeding sections, it could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868, and that therefore The Code sections could not apply to the present case, because the Yadkin Railroad was not begun to be constructed until about 1889."

This conclusion, as I contend, is absolutely unwarranted and is against every known principle or statuetory construction. So this statute is in effect reenacted by the Supreme Court and made to read as follows:

"The boards of commissioners of certain counties shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the county had a pecuniary interest at the time of the adoption of the constitution of 1868."

Now, this conclusion of the court necessarily involves three propositions, none of which can be sustained.

FIRST. That the statute of April, 1869, was retroactive in its effect and acted back twelve months to the time of the adoption of the constitution. The statute reads: "The county commissioners of the several counties shall have power to subscribe stock." There

is absolutely no reference to the constitution in this act. The words of the act are prospective, and it is a universal principle of construction that all statutes shall be prospective in their operation and not retrospective, unless the statute itself expressly says to the contrary.

SECOND. This holding or conclusion necessarily involves the denial of the right of the General Assembly to bring forward or re-enact a statute that has for many years been on the statute books. This statute was as much re-enacted by Battle's Revisal, and again by the Code of 1883, as if it had never before been on the statute books of the State. There has not been a day since April 10th, 1869, when it has not been a living, vital statute, and I contend, if work should begin on any railroad in the State to-day, that under this statute, the county could on to-morrow, vote a subscription, under section 1996 of The Code. The very words of the statute look to the future; and if they did not, every rule of construction would make them apply to any unfinished road in the future.

Battle's Revisal and the Code of 1883 provide that all public acts not therein included are repealed; but, if this construction stands, then the re-enactment of said statute in the Revisal and The Code amount to nothing, and, whether left out or put in these Codes, the act is repealed anyhow.

THIRD. This conclusion involves the further proposition that our Supreme Court can make a law as well as construe one already made. The Court strikes out the words "citizens of the county," and inserts in lieu thereof the word "county." It interpolates the word "pecuniary" before the word "interest," and adds the words "at the time of the adoption of the constitution of 1868."

This stretch of judicial power cannot be sustained. Under our form of government, the courts can construe statutes, but they have no right to radically change them.

Justice RODMAN lays down the true rule when he says: "But to add limiting or qualifying words is not in general permissible, or except for very strong reasons when the words used contained an intelligible description of the object." Now here is a statute as plain as it can be made. There is no confusion in its words; no ambiguity in its meaning. It is a plain, lucid statute. What right has the court to change it?

It is contended that because the constitution, in speaking about the powers of the State in lending its credit, used the words "direct pecuniary interest," and "at the time of the adoption of this constitution," it must follow that these words must be put into this statute.

It is admitted that the convention intended to insert the words into the constitution, and this intent was made manifest by the convention's taking pains to insert them. But it is equally clear that the General Assembly in April, 1869, intended not to insert them, for it took pains to leave them out. Two other General Assemblies took pains to leave them out, but the highest court says that they must go in. What was the necessity of putting them in? No known rule of construction required it or even allowed it. In the brief of the counsel for Stanly county is found this language: "It is also referred to to emphasize what has already been insisted upon, that the constitutional provision of 1868, and the acts of 1868-9 (sections 1996 *et seq.*), were only intended to apply to railroads existing at that date, in view of the extraordinary conditions of that period. They were left in the constitution of 1875 and brought forward in The Code evidently by inadvertence."

The mere statement of such a proposition so appals the intellect that its scope cannot be at once comprehended. The court does not adopt this principle in so many words, but it does in substance, when it says, "It could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868," and so this section 1996 is meaningless—inserted by inadvertence.

If the courts of our State have the constitutional power to say statutes are left in our Code by inadvertence, it has an equal power to say, as the counsel contended above, that provisions in the constitution of the State were inserted by inadvertence, and an equal power to say that provisions were left out by inadvertence, and an equal power to say that the entire body of the constitution and statutory law of the State is a mere inadvertence. And thus popular government, as it has heretofore been understood, ceases.

But section 1996 itself contains the strongest proof that it was not inserted in the Code of 1883 by inadvertence, but that it was inserted designedly.

Section 1 of the original act and section 66 of Bat-

tle's Revisal read : "The county commissioners of the several counties in this State shall have power," etc. But, when the Code commissioners and the General Assembly of 1883 came to insert this provision in The Code of 1883, they made section 1996 read as follows : "The board of commissioners of the several counties shall have power, etc." Section 705 of The Code provides : "All actions or proceedings by or against a county in its corporate capacity shall be in the name of the board of commissioners of the county. So that, so careful was the General Assembly of 1883 to give to this statute a present and future vitality, that it takes pains to change "The county commissioners" to "The boards of commissioners," a more correctly legal and technical expression. And it further drops out the words "in this State," all of which shows that the former statute underwent a searching examination.

By its insertion in this Code, this section took effect on November 1st, 1883, and, being prospective in all of its terms, it is in force to-day, and will so remain until repealed, giving a present power to any county of the State to subscribe stock to any railroad unfinished at the time of the subscription. But it can easily be shown that the construction put on this section 1996 by the court is wrong, when tested by every rule of law and of grammar.

It is an established rule of law that, when there is any doubt about the meaning of a statute, resort can be had to the title. The title to the act of April 10th, 1869, now section 1996 of The Code, is as follows :

"An act to authorize the several counties of the State to take stock in railroad companies," making it plain that this is a general act to apply to all counties of the State. Had it meant to limit the provision to those counties which already had stock in the roads to be completed, it would have said "an act to authorize certain counties," and section two of the act, now section 1997 of The Code, reads : "The commissioners of any county." If the view of the court is correct it should read "of any such county."

And section 1996 further says : "in which the citizens of the county may have an interest." If the court must interpolate the word "pecuniary" before "interest," then the logical result is that every citizen of the county must have stock in the road before a subscription can be voted, for it does not say : "in which certain citizens or in which citizens may have

an interest," but "in which the citizens of the county may have an interest." But if this is meant, and a pecuniary interest is meant, then the statute should read "in which the citizens of the county may have interests;" for it is not to be supposed that all the citizens of a county could own a block of railroad stock in joint ownership. And the statute reads, "may have an interest," the constitution says in which the State "has a direct pecuniary interest." "May have" evidently refers to the future, yet the illogical position is taken that before a county can subscribe stock to a railroad company the county must already have had invested in stock in the road with the loose surplus that so many counties of the State had at the close of the war, and now have. How did counties then, and how do they now, have pecuniary interests in railroad companies? By voting bonds and taking stock, not by making an independent investment in the stock first, and then voting bonds. But it is said that this construction is necessary in view of the extraordinary conditions of the period of 1868–9.

Were there not as many unfinished roads in the State in 1873 and 1883 as in 1868, and are there not as many or more in the year 1897? In its definition of the word completion the Court says: "We cannot see why the word completion should be thought to have been used by the legislators in any other sense than the one most usual and natural." But when the Court comes to define the word "interest" it abandons the most usual and natural sense and interpolates the word "pecuniary" before it, and gives it an unusual and unnatural meaning. Why did the framers of the constitution take pains to use the words "direct pecuniary interest?" Because they knew the use of the word "interest" alone carried with it a meaning broader than they intended. And what is the result of this faulty and illogical course of reasoning? Hundreds of thousands of dollars are repudiated, deserving persons are impoverished, the good name of the State is lost. I do not believe this reasoning can stand the test of time. I am further led to this conclusion by the fact that this construction of section 1996 is not adverted to in the concurring opinions of Justices CLARK and FURCHES, nor in the dissenting opinion of Chief-Justice FAIRCLOTH.

These bonds were in the hands of innocent purchasers before this change in the statute. It seems to in-

volve such a change in the statute as to impair the obligations of a contract, and the Supreme Court of the United States has decided that the constitutional provision against the enactment of such laws by States applies also to an impairment by State judicial decisions. If this case ever reaches this highest judicial tribunal, it can well repeat the words used by it in a well-known case, involving the validity of municipal bonds:

"We shall never immolate truth, justice and the law because a State tribunal has erected the altar and declared [decreed] the sacrifice."

LINDSAY PATTERSON.

Provisions of Constitution, Ordinance of Constitutional Convention and Statutes of North Carolina, which this Court may desire to refer to in connection with this case.

1.

The following are provisions of the **Constitution of North Carolina** (see Code of North Carolina, 1883, Volume 2):

"ARTICLE II.

"LEGISLATIVE DEPARTMENT.

* * * * * *

SECTION 12. "The General Assembly shall not pass any private law, unless it shall be made to appear thirty days' notice of application to pass such a law shall have been given under such direction, and in such manner as shall be provided by law."

* * * * * *

SECTION 14. "No law shall be passed to raise money on the credit of the State or to pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities or towns to do so, unless the bill for the purpose shall have been read three several times in each House of the General Assembly and passed three several readings, which readings shall have been on three different days and agreed to by each House respectively, and unless the yeas and nays on the second and third reading of the bill shall have been entered on the Journal."

* * * * * *

SECTION 16. "Each House shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly."

* * * * * *

SECTION 21. "The style of the acts shall be: 'The General Assembly of North Carolina do enact.'"

* * * * * *

SECTION 23. "All bills and resolutions of a legislative nature shall be read three times in each House before they pass into laws, and shall be signed by the presiding officers of both Houses."

* * * * * *

"ARTICLE IV.

"JUDICIAL DEPARTMENT.

SECTION 19. "The laws of North Carolina, not repugnant to this constitution, or the constitution and laws of the United States, shall be in force until lawfully altered."

ARTICLE V.

REVENUE AND TAXATION.

SECTION 1. "The General Assembly shall levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which shall be equal on each to the tax on property valued at three hundred dollars in cash. The Commissioners of the several counties may exempt from capitation tax in special cases, on account of poverty and infirmity, and the State and county capitation tax combined shall never exceed two dollars on the head."

* * * * * *

SECTION 4. "Until the bonds of the State shall be at par, the General Assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State, except to supply a casual deficit, or for suppressing invasion or insurrection, unless it shall in the same bill levy a special tax to pay the interest annually. And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct

vote of the people of the State, and be approved by a majority of those who shall vote thereon."

* * * * * *

SECTION 6. "The taxes levied by the Commissioners of the several counties for county purposes, shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly."

SECTION 7. "Every act of the General Assembly levying a tax, shall state the special object to which it is to be applied, and it shall be applied to no other purpose."

ARTICLE VII.

* * * * * *

SECTION 7. "No county, city, town or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein."

SECTION 12. "All charters, ordinances and provisions relating to municipal corporations shall remain in force until legally changed, unless inconsistent with the provisions of this constitution."

2.

Act of April 10, 1869, being Chapter CLXII of the Laws of 1868, 1869, (p. 417), "an Act to authorize the several counties of the State to take stock in railroad companies."

SECTION 1. The General Assembly of North Carolina do enact, that the County Commissioners of the several Counties in this State shall have power to subscribe stock to any Rail Road Company or Companies, when nessary to aid in the completion of any Rail Road in which the citizens of the County may have an interest.

SEC. 2. That the Commissioners of any County proposing to take stock in any Rail Road Company shall meet and agree upon the amount to be subscribed, and if a majority of the Commissioners shall vote for the proposition, this shall be entered of record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the Commissioners shall order an election, to be held on a notice of not less than thirty days for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the County Commissioners. And if a majority of the qualified voters of the County shall vote in favor of the proposition, the County Commissioners, through their Chairman, shall have power to subscribe the amount of stock proposed by them, and submitted to the people subject to all the rules, regulations and restrictions of other stockholders in such company or companies : Provided, also, That the Counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper.

SEC. 3. That all elections ordered under the second section of this act shall be held by the Sheriff under the laws and regulations provided for the election of members of the General Assembly. The votes shall be compared by the County Commissioners, who shall make a record of the same.

SEC. 4. In case the County shall subscribe the amount proposed in bonds, the Commissioners shall have power to fix the rate of interest, not to exceed the rate of eight per cent., when the interest on said bonds shall be payable, and at what place, and shall also fix the time and places of paying the interest, and shall also determine the mod and manner of the same ; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds.

SEC. 5. The taxes authorized by this act, to be raised for the payment of interest or principal, shall be collected by the Sheriff in like manner as other public taxes, shall be paid into the hands of the County Treasurer, to be used by the Chairman of the County Commissioners as directed by this act.

SEC. 6. This act shall be in force from and after its ratification.

Ratified the 10th day of April, A. D. 1869.

[The Act of April 10, 1869, was afterwards incorporated in the Code of 1883 and designated as Sections 1996–2000, next below reprinted]

3.

THE CODE SECTIONS.

Sections 1996-2000 of the Code of North Carolina of 1883 (**also authorizing bonds in question**):

"SEC. 1996. The boards of commissioners of the several counties shall have power to subscribe stoek to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest.

SEC. 1997. The board of commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and, if a majority of the board shall vote for the proposition, this shall be entered upon the record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the board shall order an election, to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board of county commissioners. And, if a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the ammount of stock proposed by them and submitted ts the people, subject to all the rules, regulations and restrictions of other stockholders in such company or companies. Provided, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper.

SEC. 1898. All elections ordered under the preceding section shall be held by the sheriff under the laws and regulations provided for the election of members of the General Assembly. The votes shall be compared by

the board of county commissioners, who shall make a record of the same.

SEC. 1999. In case the *county* shall subscribe the amount proposed in bonds, *the board of commissioners shall have power* to fix the rate of interest, not to exceed the rate of eight per cent., when the interest on said bonds shall be payable, and at what place, and shal' also fix the time and places of paying the interest, and shall also determine the mode and manner of the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds.

SEC. 2000. The taxes authorized by the three preceding sections to be raised for the payment of interest or principal shall be collected by the *sheriff in like manner as other State taxes*, and be paid into the hands of the county treasurer to be used by the chairman of the board of county commissioners as directed by this chapter."

It is admitted by all parties and all courts that these sections of the Code are constitutionally valid, and authorize the issue of bonds on the conditions therein prescribed.

Code sections 1996 to 2000 were originally the above-printed act of April 10, 1869, the title of which is, "An act to authorize the several counties of the State to take stock in railroad companies." Chapter 171, Public Laws, North Carolina, 1868–69. Ratified April 10, 1869. Public Laws, North Carolina, 1868–69, page 417. Re-enacted in Battle's Revisal, January 1, 1874, as Sections 66 to 70 of Chapter 99; re-enacted in Code of North Carolina which went into effect November 1, 1883.

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 264.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY AND OTHERS, PETITIONERS,

against

W. N. COLER AND COMPANY, RESPONDENTS.

MEMORANDUM FILED BY JOHN F. DILLON, HARRY HUBBARD, CHARLES PRICE, AND AUG. H. PRICE, SOLICITORS FOR W. N. COLER, AND COMPANY, RESPONDENTS, ON MOTION TO ADVANCE.

Having reference to the motion to advance the above-entitled cause for hearing, we respectfully submit that the same should be heard at as early a day as the convenience of the court will admit, and we concur and join in the motion to advance filed by petitioners.

Joining in the motion to advance the suit for hearing, we do not, however, concur in the reasons for the same suggested by the defendants.

In the first place, the case of Commissioners *v.* Snuggs, 121 N. Car. Rep., 294, was a suit by the commissioners of the county of Stanly against its treasurer, to enjoin him from paying over, in performance of his duty as trustee, funds held by him as such for certain bondholders who had purchased the same from the county at the highest price, in open market, being the sum of six thousand dollars, a year's interest, set apart by him from all other moneys held as treasurer, the same having been collected from the people by the sheriff for that purpose alone; that the interest on the bonds had been paid regularly for four years, with no suggestion that they were not valid, legal bonds until the beginning of the suit of Commisssoners *v.* Snuggs, 121 N. Car.

That the bonds had been issued by the county, by and through this board of commissioners, in payment of its subscription, in the sum of one hundred thousand dollars, to the capital stock of the Yadkin Railroad Company, to aid in the building of its railroad through the said county of Stanly, which was duly built in strict accordance with the contract, and which had been in active and successful operation for several years before suit begun.

That the money held by the said trustee was collected for that purpose alone and belongs to the said bondholders, many of whom, scattered far and wide, are people who bought the same as investments and who are deprived of their interest money by said injunction.

That the University of North Carolina is the owner of six thousand dollars ($6,000) of the bonds, having bought the same as a good investment, and is awaiting, together with other holders of the same bonds, the result of this suit.

When the suit was commenced in the superior court of Stanly county the only ground alleged in the complaint to render the bonds invalid was the fact that certain acts of the legislature authorizing the issue of the bonds had not been enacted in accordance with the constitution, in the failure to enter the ayes and nays on all the readings of the bill upon the journals.

That when the case was argued in the superior court the recitals of the sections of the Code of North Carolina authorizing the issue of the bonds were not called to the attention of the court in connection with the leading case of Belo *v.* Commissioners of Forsyth, 76 N. Car. Rep., pages 487 and 490. If it had been, it is not to be supposed the court would have decided the case as it did. Indeed, it could not, unless the leading case upon municipal bonds in the State was overruled.

That the cases of Commissioners *v.* Call and Commissioners *v.* Payne, referred to in petitioners' brief, were begun in the State court in a similar manner to that of the Snuggs case, but the questions involved are different. There is no conflict, in the true sense, between the circuit court of appeals and the supreme court of North Carolina as to any of the cases referred to.

That the decision of the supreme court of North Carolina in the said case of Commissioners *v.* Snuggs, 121 N. Car. Rep., where no bondholder was a party, as said by Judge Simonton, was practically *ex parte* (page 53, printed Record, circuit court of appeals). "The parties, plaintiff and defendant, to this suit were practically one" (*ibid.*).

The court in the opinion filed, in construing the sections

of the Code of North Carolina, 1993, 1997, &c., expressly upheld the same as having been enacted in accordance with the provisions of the constitution. It was further held that the said sections were valid and a part of the statute law of the State; but the court said, it not appearing that the citizens of the county had an interest in the road, and that the same was not an unfinished road, the said sections did not apply.

As before said, in this memorandum the court was inadvertent to the recitals in the bonds, as it was also to the record of the board of commissioners issuing the same, to the effect that, "it appearing that the citizens of said county have an interest in said railroad," and that there was a railroad being constructed, and the conditions upon which payment was to be made, by installments, as such part, to wit, so many miles of the same, were constructed and completed.

And, as before stated in this paper, the leading case of Belo *v.* Commissioners, 76 N. Car. Rep., was not called to the attention of the court, in which it was held that the conditions upon which bonds are issued are for the *municipal authorities*, and not the *innocent bondholder*, to see performed.

The above shows there was no such conflict between the courts as that suggested in the case of Forsyth *v.* Hammond, 166 U. S. Rep., referred to in the petition of defendants.

In the opinion of Judge Goff, speaking for the circuit court of appeals, the decision is put upon the ground that the court was bound to follow and must be controlled by the decision of the State court construing the constitution and statutes of the State. This was in disregard of the rule laid down by Justice Harlan in the Wilkes County case, and,

indeed, by Judge Simonton on the circuit in the case at bar, that it is only the decisions of the highest court of the State upon the question *of whether a statute ever became a law at all* that will control the Federal courts. On the other hand, the Federal courts are not controlled by the construction put upon a *valid statute* by the State tribunals authorizing the issue of bonds which have come into the hands of innocent purchasers long before the decisions so construing the same, and which declare void negotiable bonds such as these in question.

It was this rule, so laid down by Justice Harlan, that seemed to require the circuit court of appeals, upon the rehearing of this cause, to reverse its former ruling referred to by petitioners. So, as it seems to us, there is no conflict here, really, between the courts.

There is a conflict, however, between this court and the supreme court of North Carolina, if any, because the principles laid down in the Wilkes County case, 180 U. S., 506, by Justice Harlan, are those upon which the Stanly County case, the one at bar, reheard in the circuit court of appeals, and the Wilkes County case, both, were decided in favor of the complainants, bondholders. This case, we submit, should be advanced for argument for the reason, further, that there are other issues of bonds, of hundreds of thousands of dollars, under the law, similar to this issue, where the annual interest has been and is being paid, and about which there is no complaint, in view of the decision of the circuit court of appeals in this case.

That, if this court shall affirm the decision of the circuit court of appeals in this suit, affirming that of Judge Simon-

ton on the circuit, as we must believe it will,
less burdensome upon the people of the county
interest now than to prolong the litigation and
pay it all at once, except this sum of six thousa
already collected and held as a trust fund for th

JOHN F. DILL
HARRY HUBB
CHARLES PRIC
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ILLON,
UBBARD,
RICE,
RICE,
Respondents.

Supreme Court of the United States.

No. 264.—October Term, 1902.

The Board of Commissioners of Stanly County and I. W. Snuggs, Treasurer of Stanly County, Petitioners,
vs.
W. N. Coler & Company.

On writ of certiorari to the United States Circuit of Appeals for the Fourth Circuit.

[June 1, 1903.]

This suit was brought in the United States Circuit Court for the Western District of North Carolina, by the respondents against the petitioner, to recover on certain coupons attached to bonds, alleged to have been issued by Stanly County, State of North Carolina, in part payment of the subscription of said county to the capital stock of the Yadkin Valley Railroad Company. The bill alleged the following facts:

The Yadkin Valley Railroad Company was organized as a corporation under the laws of North Carolina, to construct and operate a railroad running from Salisbury in that State, south to Norwood, a point in Stanly County.

The incorporation of the said company was under and by virtue of chapter 236 of the Acts of 1870, passed by the legislature for that year; and the said chapter was amended by an act of the legislature, chapter 183 of the Acts of 1887.

The county being desirous of aiding in the construction of said road, and acting through its proper authorities, subscribed the amount of $100,000 to the capital stock of the company, in pursuance of the authority and power conferred upon the said county under and by virtue of the acts of the legislature of North Carolina as above set out; and, also, under and by virtue of sections 1996, 1997, 1998 and 1999 of the Code of North Carolina, all of the said acts and sections of the Code of North Carolina having been enacted and become laws in accordance with the constitution of the State.

The county still holds the stock and derives benefit from the road in increased facilities for transportation, greatly increased value of the lands of the county and from the taxes paid thereon. A copy of the bonds was attached to the bill, and is inserted in the margin.*

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*Exhibit A.

(Copy.)

County of Stanly Six per Cent Bond.

Stanly County, State of North Carolina, is indebted to the bearer in the sum of five hundred dollars, lawful money of the United States, payable on the first day

The bonds were exposed for sale and the respondents became purchasers of them in good faith, and at the highest market price, and without any notice, express or implied, that there was any suggestion of their being void, invalid, fraudulent or otherwise than perfectly legal in their issue and sale.

Interest on the bonds issued as the same has become due has been paid for the last four years. The coupons due and the amounts thereof are as follows:

48 Stanly County coupons, Nos. 2, 46, 48, 49 and 72, $60.00 each.....	$2,880 00
33 Stanley County coupons, Nos. 81, 92, 95, 96, 98, 108, 110, 112, 116, 118, 120, all numbers inclusive, $30.00.....	990 00
Making the sum of.....	$3,870 00

The payment of said sums were demanded at the proper time and refused, although the said total sum had been collected from the tax payers of the county by the board of commissioners, in pursuance of the power conferred upon them, and was in the hands of I. W. Snuggs, (one

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of July, A. D. one thousand nine hundred and twenty, with interest thereon from the first day of July, A. D. one thousand eight hundred and ninety, at the rate of six per cent per annum, payable on the first day of July in each year at the First National Bank of Salisbury, North Carolina, on presentation and surrender of the respective coupons hereto attached, as they severally become due and payable. This bond is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, making a total of one hundred thousand dollars, issued by authority of an act of the general assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled "An act to amend the charter of the Yadkin Railroad Company," and of sections 1996, 1997, 1998 and 1999 of the Code of North Carolina, and authorized by a majority vote of the qualified voters of Stanly County, at an election regularly held for that purpose on the 15th day of August, A. D. 1889, duly ordered by the board of commissioners of Stanly County.

This series of bonds is issued to pay the subscription of one hundred thousand dollars made by Stanly County to the capital stock of the said railroad, known as "The Yadkin Railroad Company." Stanly County reserves the privilege of paying the principal and interest of any or all of this series of bonds at any time after the expiration of ten years, upon the board of commissioners of said county first giving three months' notice of such payment in some newspaper published in said county, when such bonds shall be paid, according to number, beginning with number one.

In testimony whereof, the chairman of the board of county commissioners of Stanly County hath hereunto subscribed his name, for and on behalf of said board, and the clerk of the Superior Court of Stanly County hath countersigned the same and affixed thereto the seal of said Superior Court, this first day of July, A. D. one thousand eight hundred and ninety.

——— ———, *Chairman.*

Countersigned: ——— ———, *Clerk of Superior Court.*

of the petitioners here,) as treasurer of the county, and having received the same for the payment of said interest, he became and is the trustee and agent of the bond and coupon holders, and therefore holds the same "for the use and in trust for complainants." The complainants are informed and believe that the reason why said treasurer has not accounted to them is that he has been restrained by a certain process of injunction, issued by one of the Superior Courts of the State of North Carolina in a suit brought in the name of the board of commissioners, and in the names of James P. Nash and G. R. McCain as plaintiffs, and against the said I. W. Snuggs as defendant, but that complainants were not made parties to the same, nor was any other bondholder. The treasurer and board of commissioners unless restrained will dispose of the fund collected as aforesaid. An injunction was prayed, and the statement of an account, and the appointment of a receiver asked.

The answer attacked the validity of the bonds, and averred that their invalidity was adjudged by the Supreme Court of the State in the case of *Commissioners* v. *Snuggs*, (121 N. C. 394,) "and that there has been no other decision or judgment given by said Supreme Court in conflict with the aforesaid decision; but that the said decision is uniform with the decision of the same court, delivered in the case of *Bank* v. *The Commissioners*, (119 N. C. 214,) which are the only two cases in which the principle or validity of these bonds has ever been before the Supreme Court of the State." There were proper replications made to the answer. The case was submitted on the pleadings and certain exhibits, some of them being the records of the suits in the courts of North Carolina.

The grounds upon which the bonds are claimed to be invalid are indicated in the opinion. A decree was entered declaring and adjudging the bonds to be valid obligations of the county of Stanly; that complainants (respondents here) in the suit were *bona fide* purchasers and holders thereof; that. I W. Snuggs was the trustee of the bondholders, and held the sum of six thousand dollars as such trustee for the benefit of the bondholders under and by virtue of the law and the orders of the board of commissioners of the county, and for the sole purpose of paying off and discharging the interest due on the bonds as set out in the bill. The decree also appointed a receiver for said sum, and ordered that said I. W. Snuggs pay the same to the receiver. It was further adjudged that the board of commissioners of Stanly County be enjoined from in any manner interfering with the execution and performance of the decree. The decree was reversed by the Circuit Court of Appeals and the cause was remanded "with directions to dissolve the injunction, discharge the receiver, and dismiss the bill." (37 C. A. A. 484.) A rehearing was granted, and the decree of the Circuit Court was affirmed. (113 Fed. Rep. 705.)

Mr. Justice McKenna, after stating the case as above, delivered the opinion of the Court.

It will be observed that the bonds recited that they were "issued by authority of an act of the general assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled 'An act to amend the charter of the Yadkin Railroad Company,' and of sections 1996, 1997, 1998 and 1999 of the code of North Carolina, and authorized by the majority vote of the qualified voters of Stanly County, at an election regularly held for that purpose, on the 15th day of August, A. D. 1889, duly ordered by the board of commissioners of Stanly County." The act of March 3, 1887, referred to, was an amendment of the act by which the Yadkin Railroad Company was incorporated, (1870–'71,) and was declared by the Supreme Court of the State not to have been passed in accordance with the constitutional provision, requiring the yeas and nays to be entered upon the journals of each house of the general assembly. (*Bank* v. *Commissioners*, 119 N. C. 214; *Commissioners* v. *Snuggs*, 121 N. C. 394.) The ruling was decided to be binding upon this court. (*Wilkes County* v. *Coler*, 180 U. S. 506; Id. *ante*, p. .)

The same objection does not lie to the sections of the code of North Carolina recited in the bonds, and the controversy in the pending case turns upon the meaning of those sections and the effect of the recitals in the bonds.

Section 1996 provides as follows: "The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest." This section and the four succeeding sections were the reproductions of a statute passed in 1868–'9, a few days more than a year after the constitution of 1868, and were passed upon and interpreted by the Supreme Court of North Carolina in *Commissioners* v. *Snuggs*, *supra*. The court said:

"It is most reasonable to conclude that the policy and purpose of both the constitutional provision and the statute (code provisions) were the same, the only difference being that in case of State aid no approval by vote of the people was required, while a majority vote of the people was required in cases of county aid. The object of the statute must have been to provide by a general act means by which counties, without special legislation for each county by separate bill, might be enabled to complete unfinished railroads in which the counties had a pecuniary interest. At the same time of the enactment of the statute of 1868–'9, and always since that time, any county of the State, duly observing the limitations of section 7 of article VII of the constitution, could and can subscribe to the capital stock of the railroad company, whether unfinished or to be begun. The act of 1868–'9, however, considering the condition of affairs then existing, that is, that there were counties which had a pecuniary interest in railroads that had been begun but were unfinished, enabled such counties to make subscriptions of bonds to complete such unfinished roads at the earliest

moment and with the least cost, by a general law passed according to section 14, article II, of the constitution. This reasoning leads us to the still further conclusion that, at the time when the act of 1868–'9 was brought forward in the code, section 1996, and the four succeeding sections, it could have had reference to no cases except those where the counties had a pecuniary interest in unfinished railroads at the adoption of the constitution of 1868, and that, therefore, the code sections could not apply to the present case, because the Yadkin Railroad was not begun to be constructed until about 1889."

It will be observed, therefore, that the Supreme Court decides that the interest of the county must have been *pecuniary*, and the railroad must have been begun *at the adoption of the constitution of* 1868.

To this case the respondents oppose the contentions that its interpretation of the constitution and code sections is (1) incorrect, and this involves the further contention that we may exercise an independent judgment of them; (2) that the recitals in the bonds were assurances to *bona fide* purchasers that the conditions expressed had been fulfilled. In other words, the recitals were assurances that the county had a pecuniary interest (assuming such to be the interest meant) in the Yadkin Railroad, and that the road had been begun before the bonds were issued—even begun before the adoption of the constitution of 1868. As far as the contention includes both dates, we may immediately dispose of it. We cannot assent to the view that purchasers of the bonds could have assumed that the railroad had been begun before the adoption of the constitution of 1868. The adoption of the constitution antedated the charter of the company. It would therefore be extreme to hold that purchasers of the bonds could have assumed that the railroad had been begun before it was authorized to be built, or that a different act of incorporation could have been assumed from that which the bonds themselves indicated. Commercial securities must necessarily be fortified by many presumptions, as we shall hereafter have occasion to remark, but it would be straining somewhat to hold that a purchaser of bonds issued for a subscription to the capital stock of a railroad company could assume that the company existed prior to the time stated in the bonds or was incorporated by a different statute than that mentioned. Pretermitting consideration of the other conditions for a time, we are brought to the contention of the respondents, that we are not constrained to follow the opinion of the Supreme Court of North Carolina.

The general rule undoubtedly is that we accept the interpretation put by the State courts upon the State constitutions and statutes. There are exceptions to the rule, and the case at bar presents one of them. The rule and its exceptions are stated in *Burgess* v. *Seligman*, (107 U.S. 20,) and the many cases by which the rule was sustained are collected in a note on page thirty of the opinion. In that case a statute of Missouri provided that the stockholders of a corporation at its dissolution were liable for its debts. It

also provided that no person holding stock as executor, &c., or holding stock as collateral security, should be personally liable, but the persons who pledged the stock should be considered as holding the same, and be liable. The Supreme Court of Missouri held that the exemption of the statute did not extend to persons receiving from the corporation itself stock as collateral security. This court decided to the contrary, and held that it was not bound to follow the decision of the Supreme Court of the State. The question presented was regarded as one of commercial law and general jurisprudence, and the right to exercise our own judgment was asserted. It was said that State decisions were to be followed when they had become a rule of property, and that "this is specially true with regard to the law of real estate and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled it is the right and duty of the Federal courts to exercise their own judgment, as they also always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there have been no decisions of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued."

Burgess v. *Seligman* was applied in *Folsom* v. *Ninety-Six*, (159 U. S. 611,) to sustain the validity of bonds issued by the defendant township to aid in the construction of a railroad. The power to issue them depended upon several statutes and the constitution of the State. After the bonds were issued the Supreme Court of the State decided that the statutes authorizing the issue of the bonds were unconstitutional. There had been no decision to that effect prior to the issuing of the bonds. We held that the decision of the Supreme Court was not binding, and construed the constitution and statutes for ourselves, and sustained the bonds.

It was, however, said in *Burgess* v. *Seligman* that even in cases in which we may exercise an independent judgment, if the question seems "balanced with doubt," we will "lean towards an agreement of views with the State courts." But we are unable to yield that difference to the decision in *Commissioners* v. *Snuggs*, notwithstanding our respect for the learned tribunal that delivered it. We are unable to construe the code sections as having had "reference to no cases except those where the counties had an interest in unfinished railroads at the adoption of the constitution of 1868." The prohibition of the constitution was directed to the State; the power given by the code sections was directed to counties. It is easy to conceive the reasons which induced the different provisions. The State

might indeed not desired to extend its general aid beyond what had been done or commenced. Local interest might be different, and the exact fulfilment of the conditions upon which aid could be granted was assured and any abuse guarded against, by requiring a vote of the people. Besides, there is no reference in the code sections to the constitution of 1868, or any retrospective implications in them. The language is that which would naturally be employed to express a present and continuing power, to be exercised as occasion should arise. And the contemporaneous construction sustains this view. There was a vote of the people of the county authorizing the subscription, and not through all the publicity and discussion of the canvass, not in the proceedings before the board of commissioners when the subscription was made, was there an intimation expressed, as far as the record shows, that the power by the counties of the State was limited by and depended upon what existed at the date of the constitution of 1868. And for four years a tax was levied and interest paid on the bonds.

As we have seen, section 1996 confers power on the boards of commissioners of counties "to subscribe stock to any railroad company or companies, when necessary to aid in the *completion* of any railroad in which the *citizens* of the county may have an *interest*." These conditions, as we have also seen, were defined to mean, by the Supreme Court of the State, in *Commissioners* v. *Sauggs*, an interest of the county, as distinguished from the interest of its citizens, and a pecuniary interest as distinguished from that which comes from the facilities afforded by a railroad; and the completion of a railroad to signify one begun, but not finished. These definitions may be disputed, and are disputed.

A county is in many ways a distinct legal entity from its citizens, but it is created for their benefit, and its duties and powers are conferred to be exercised for their welfare. This is true even of its ordinary and governmental functions; it is especially true of the power to subscribe to the stock of a railroad company, and in conferring such power the predominant thought would be, not the interests of the county as such, but the interest of its citizens as such. And the language of the Code of North Carolina conforms to and exactly expresses the thought—accurately marks a distinction between the county acting through its board of commissioners and the citizens of the county, and provides that the interests of the latter shall induce the exercise of the powers and duties of the former. Such interest could not be pecuniary—could only be that which comes from the possession and advantages of railroads. And the same consideration would seem to lead to a different definition of the word "completion" than that given by the Supreme Court of North Carolina. Of course, there can be no completion of a thing which has not been begun, but it does not follow that the legislature intended to express a distinction between railroads which could

receive, according to the degree of their construction. The statute regards not actual construction but aid to construction. Its purpose is the production of a result—the building of railroads, and, it is manifest, that aid given before their commencement would be as efficient, and might be more necessary, than that given after their commencement. It is not easy to conceive what purpose would be subserved by confining the aid to roads which have been begun; and there would be certain embarrassment in deciding the degree to which construction must be advanced. However, these are but passing observations. We may rest the validity of the bonds on the right of a *bona fide* holder from their recitals to assume that the county had the interest claimed and that the railroad had been begun before subscription to its stock was made. It makes no difference whether the existence or non-existence of those conditions could have been ascertained by inquiry. Purchasers were not expected to be at or near the sources of information. The bonds were not offered in Stanly County only, or in the State of North Carolina only. They were expected to be offered in the financial markets of the other States of the Union; even offered in the financial markets of the world. They were payable to bearer. They were expected to have, and their value, to an extent, depended upon their having almost the currency and sanction of money. If a buyer of bonds is chargeable not only with want of power to issue them, (a considerable risk, as the records of the courts show,) and also with the performance of conditions *in pais*, their value would be much diminished. And what good would such a holding subserve? The affairs of a county can only be administered by its officers, and to their attention and duty its interests must be entrusted. When the power to issue bonds, therefore, depends upon the existence of conditions the local officers are charged with the duty and the responsibility of ascertaining them, and the presumption that the duty was exercised should and does accompany and guarantee the bonds in every financial market. And this court has so decided. In *Evansville* v. *Dennett*, (161 U. S. 434,) the bonds passed upon recited that they were "issued by the city of Evansville in payment of a subscription to the Evansville, Henderson and Nashville Railroad Company, made in pursuance of an act of the legislature of the State of Indiana and an ordinance of the city council of said city, passed in pursuance thereof." The bonds were dated May 1, 1858. Other bonds were issued December 1, 1870, in payment of the subscription of the city to the stock of the Evansville, Carmi and Paducah Railroad Company. The recital in the latter bonds was as follows:

"By virtue of an act of the general assembly of the State of Indiana, entitled 'An act granting to the citizens of the town of Evansville, in the county of Vanderburg, a city charter,' approved January 27, 1847, conferring upon the city council of said city power to take stock in any com-

pany authorized for the purpose of making a road of any kind leading to said city; and by virtue of the resolution of said city council of said city, passed October 4, 1869, ordering an election of the qualified voters of said city upon the question of subscribing three hundred thousand dollars to the capital stock of the Evansville, Carmi and Paducah Railroad Company, and said election, held on the 13th day of November, 1868, resulting in a legal majority in favor of such subscription, and by virtue of a resolution of said city council, passed May 23, 1870, ordering an issue of the bonds of the city of Evansville (of which this is a part) to an amount not to exceed three hundred thousand dollars, bearing interest at the rate of seven per cent per annum, for the purpose of paying the subscription as authorized above. The charter of Evansville authorized the city to take stock in any chartered company for making roads to said city. . . . *Provided*, That no stock shall be subscribed or taken by the common council in any such company unless it be on the petition of two-thirds of the residents of said city, who are freeholders of the city, distinctly setting forth the company in which stock is to be taken, and the number and amount of shares to be subscribed."

The charter of Evansville was amended in 1865, but the amendment was declared unconstitutional by the Supreme Court of the State, and another act was passed in 1867. The latter act authorized a subscription to the stock of the railroad company, when a majority of the qualified voters of the city, who were also taxpayers, should vote therefor. The ordinances of the city recited that an election was held, but did not recite that a petition of resident freeholders of the city was presented to the common council as required by the charter, and no such petition was in fact presented. The case came to this court on certificate, and the following questions were prepounded: Did the recital in the first series of bonds put the purchaser upon inquiry as to the terms of ordinances under which the bonds were issued? Did the recital in the second series of bonds, those issued to the Evansville, Carmi and Paducah Railroad Company, (1) put the purchaser upon inquiry as to the terms of the resolution under which they were purported to have been issued; (2) estop the city from asserting that the bonds were not issued for a stock subscription upon a petition as prescribed by the charter; (3) "was a *bona fide* purchaser for value of the bonds issued to the Evansville, Carmi and Paducah Railroad Company charged by the recitals in said bonds with notice that they were issued in pursuance of an invalid act, and in pursuance of an election under it, or had such a purchaser a right to assume, from the recital, that the prequisities of both the valid act and the invalid act had been observed by the common council before the issuance of such bonds?"

Sustaining the validity of the first series of bonds, the court said, by Mr. Justice Harlan, it could not be doubted that the city had the power to subscribe to the stock upon the performance of the conditions expressed in the questions propounded, and further said they "were only conditions which the statute required to be performed or met before the power given

was exercised. That there was legislative authority to subscribe to the stock of these companies cannot be questioned, although the statute declared that the power should not be exercised except under the circumstances stated in the statute."

And of the effect of the recital that the subscription was "made in pursuance of an act of the legislature thereof," it was observed: "This imports not only compliance with the act of the legislature, but that the ordinances of the city council were in conformity with the statute. It is as if the city had declared, in terms, that all had been done that was required to be done in order that the power given might be exercised."

Passing on the second series of bonds and expressing the principle applicable, *School District* v. *Stone*, 106 U. S. 183, was quoted from as follows: '"Numerous cases have been determined in this court, in which we have said that where a statute confers power upon a municipal corporation, upon the performance of certain precedent conditions, to execute bonds in aid of the construction of a railroad, or for other like purposes, and imposes upon certain officers—invested with authority to determine whether such conditions have been performed—the responsibility of issuing them when such conditions have been complied with, recitals, by such officers, that the bonds have been issued 'in pursuance of,' or 'in conformity with,' or 'by virtue of,' or 'by authority of' the statute, have been held in favor of *bona fide* purchasers for value to import full compliance with the statute, and to preclude inquiry as to whether the precedent conditions had been performed before the bonds were issued. (*Town of Coloma* v. *Eaves*, 92 U. S. 484; *Commissioners* v. *Belles*, 94 U. S. 104; *Mercer County* v. *Hacket*, 1 Wall. 83; *Anderson County Commissioners* v. *Beal*, 113 U. S. 227, 238–9, and authorities there cited; *Cairo* v. *Zane*, 149 U. S. 122.)'"

And again: "As therefore the recitals in the bond import compliance with the city's charter, purchasers for value having no notice of the nonperformance of the conditions precedent, were not bound to go behind the statute conferring the power to subscribe, and to ascertain, by an examination of the ordinances and records of the city council, whether these conditions had, in fact, been performed. With such recitals before them they had the right to assume that the circumstances existed which authorized the city to exercise authority given by the legislature."

In *Gunnison County Commissioners* v. *Rollins*, the bonds passed on recited that all the requirements of law had been fully complied with by the proper officers in the issuing of the bonds. It was held that the county was estopped from asserting, against a *bona fide* holder for value, that the bonds so issued created an indebtedness in excess of the limit prescribed by the constitution of Colorado. See also *Waite* v. *Santa Cruz*, (184 U. S. 302,) where effect of recitals in bonds was thoroughly considered and the doctrine of prior cases repeated and affirmed.

The application of these cases to that at bar is denied by petitioners. The argument is (to quote counsel):

"The preliminary question, whether the railroad was incomplete or the county had an interest, was not one as to which the commissioners had peculiar knowledge, qualifying them to answer. They had such knowledge as the whole public could obtain—nothing more. It was incumbent on the respondents to inquire about the fact, because the incompleteness or completeness, or the interest of the county, was a test of the existence of the power of the board, not a condition precedent to the exercise of a power granted."

It is also said that counties having an interest were constituted a class, and only members of the class could have exercised the power conferred by the code sections. We think the distinctions made are not substantial. No matter how you may designate the interest of the county or the condition of the railroad, they were facts which bore the same relation to the power of the board of commissioners of Stanly County, as the facts in the cited cases bore to the power of the officers the exercise of which was sustained. It is indifferent whether you call the facts which were to be ascertained tests of power or conditions precedent or marks of a class. They were something which were to exist prior to the exercise of the power, and the existence of which the law imposed on the board of commissioners the duty to ascertain.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.